

  
सत्यमेव जयते

# भारत का राजपत्र The Gazette of India

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सं. 48] नई दिल्ली, नवम्बर 20—नवम्बर 26, 2016, शनिवार/कार्तिक 29—अग्रहायण 5, 1938  
No. 48] NEW DELHI, NOVEMBER 20—NOVEMBER 26, 2016, SATURDAY/KARTIKA 29—AGRAHAYANA 5, 1938

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक् संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

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भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)

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भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

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**भारतीय रिज़र्व बैंक**

मुंबई, 23 सितम्बर, 2016

**का.आ. 2256.**—राष्ट्रीय आवास बैंक अधिनियम, 1987 (1987 का सं. 53) की धारा 6(2) के साथ पठित धारा 6 के खण्ड (घ) की उपधारा (i) के अनुसरण में भारतीय रिज़र्व बैंक डॉ. ऊर्जित पटेल के स्थान पर एतद्द्वारा श्री आर. गाँधी, उप-गवर्नर, भारतीय रिज़र्व बैंक को राष्ट्रीय आवास बैंक के निदेशक मंडल में बैंक के नामिती निदेशक के रूप में नामित करता है।

[अधिसूचना सं. वैवि.एपीपीटी. एनएचबी. 3652/08.21.006/2016-17]

सुदर्शन सेन, कार्यपालक निदेशक

**RESERVE BANK OF INDIA**

Mumbai, the 23rd September, 2016

**S.O. 2256.**—In pursuance of clause (d) of sub-section (1) of Section 6 read with Section 6(2) of the National Housing Bank Act, 1987 (No.53 of 1987), Reserve Bank of India hereby nominates Shri R. Gandhi, Deputy Governor, Reserve Bank of India, Mumbai, as the Bank's Nominee Director on the Board of Directors of the National Housing Bank vice Dr. Urjit R. Patel.

[Notification No. DBR.Appt.NHB.3652/08.21.006/2016-17]

SUDARSHAN SEN, Executive Director

**उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय**

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 17 अक्तूबर, 2016

**का.आ. 2257.**—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम (4) के उपविनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं:-

**अनुसूची**

क्रम संख्या	लाइसेंस संख्या	स्वीकृत करने की तिथि	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा मा	भाग	अनु	वर्ष
1.	एल-9512352716	11.05.2016	मै0 जय दुर्गे ट्रेडर्स, झज्जर रोड, हनुमान मंदिर के पास, गाँव धौर, तहसील बैरी, जिला झज्जर - 124103, हरियाणा	खड़जे के लिए पूर्व ढलित कंक्रीट ब्लॉक	15658	-	-	2006
2.	एल-9512352522	13.05.2016	मै0 कैलाश ज्वेलरी हाउस, 1 डी/14, बी पी, 1-2 चौक, एनआईटी, जिला फरीदाबाद, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातुएं आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
3.	एल-9512352615	13.05.2016	मै0 कैलाश ज्वेलरी हाउस, 1 डी/14, बी पी, 1-2 चौक, एनआईटी, जिला फरीदाबाद, हरियाणा	चौंदी एवं चौंदी मिश्रधातुएं आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	2112	-	-	2014
4.	एल-9512352817	18.05.2016	मै0 जे एण्ड जी ट्रांसफार्मर कम्पनी, 13 के एम, पटौदी गुडगाव रोड,	बाह्य - रंग तेल इम्मेर्सड वितरण ट्रांसफार्मर 2500 kVA, 33 kV	1180	01	-	2014

			गौव – धौरका, जिला गुडगावँ हरियाणा					
5.	एल- 9512352918	26.05.2016	मै0 मुस्कान बैवरेजिस इंटरप्राइसिस, तोशाम रोड, वी पी ओ बपोरा, जिला भिवानी, हरियाणा	पैकेजबन्द पेय जल (पैकेजबन्द प्राकृतिक मिनरल जल के अलावा)	14543	-	-	2004

[सं. सीएमडी/13:11]

जय पाल सिंह, अनुभाग अधिकारी

**MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION****(Department of Consumer Affairs)****(BUREAU OF INDIAN STANDARDS)**

New Delhi, the 17th October, 2016

**S.O. 2257.**—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :—

**SCHEDULE**

Sl. No.	Licences No. CM/L-	Grant Date	Name & Address of the Licensee	Title of the Standard	IS No.	Part	Sec.	Year
1.	L-9512352716	11.05.2016	M/s Jai Durge Traders, Jhajjar Road, Near Hanuman Mandir, Village Dhaur, Tehsil Beri, Distt : Jhajjar – 124103, Haryana	Precast Concrete Blocks for Paving	15658	-	-	2006
2.	L-9512352522	13.05.2016	M/s Kailash Jewellery House, 1 D/14, B.P., 1-2 Chowk, NIT, Distt. Faridabad, Haryana	Gold & Gold Alloys Jewellery/Artefacts – Fineness and Marking	1417	-	-	1999
3.	L-9512352615	13.05.2016	M/s Kailash Jewellery House, 1 D/14, B.P., 1-2 Chowk, NIT, Distt. Faridabad, Haryana	Silver & Silver Alloys Jewellery/Artefacts – Fineness and Marking	2112	-	-	2014
4.	L-9512352817	18.05.2016	M/s J&G Transformer Company 13 KM, Pataudi Gurgaon Road, Vill.- Dhorka, Distt. Gurgaon Haryana	Outdoor type oil immersed distribution transformers up to including 2500 kVA, 33 kV	1180	01	-	2014

5.	L-9512352918	26.05.2016	M/s Muskan Beverages Enterprises, Tosham Road, V.P.O. Bapora, Distt. Bhiwani, Haryana	Packaged drinking water (Other than Natural Mineral Water)	14543	-	-	2004
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[No.CMD/13:11]

JAI PAL SINGH, Section Officer

नई दिल्ली, 17 अक्टूबर, 2016

**का.आ. 2258.—** भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम (5) के उपविनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है :-

**अनुसूची**

क्रम संख्या	लाइसेंस संख्या सीएम/एल	लाइसेंसधारी का नाम व पता	लाइसेंस के अन्तर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द करने की तिथि
----शून्य----				

[सं. सीएमडी/13:13]

जय पाल सिंह, अनुभाग अधिकारी

New Delhi, the 17th October, 2016

**S.O. 2258.—**In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled/suspended with effect from the date indicated against each:

**SCHEDULE**

Sl. No.	Licences No. CM/L-	Name & Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence cancelled/suspension	Date of Cancellation
-- NIL --				

[No.CMD/13:13]

JAI PAL SINGH, Section Officer

नई दिल्ली, 17 अक्टूबर, 2016

**का.आ. 2259.—** भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम (4) के उपविनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं:-

**अनुसूची**

क्रम संख्या	लाइसेंस संख्या	स्वीकृत करने की तिथि	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा मा	भाग	अनु	वर्ष
1.	एल - 9512352219	07.04.2016	मै0 डयूरा बिल्ड केयर प्रा0 लि0, प्लॉट नं0 2376, मॉडर्न इण्डस्ट्रीयल इस्टेट,	सिरेमिक टाइल्स और पच्चीकारी में प्रयुक्त असंजक	15477	-	-	2004

			पार्ट बी, बहादुरगढ़, जिला झज्जर - 124507, हरियाणा					
2.	एल - 9512352118	13.04.2016	,मै0 अमौर इण्डिया, जीएफ - 21, गोल्ड सूक, सुशांत लोक - 1, जिला गुड़गाँव - 122002, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातुएं आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
3.	एल- 9512352320	18.04.2016	मै0 स्वास्तिक पाइप्स लि0, , 41 केएम, दिल्ली रोह्तक रोड, बीपीओ असौदा, जिला झज्जर, हरियाणा	विद्युत संस्थापनों के लिए नलिकाएँ भाग 2 - ठोस इस्पात नलिकाएँ	9537	02	-	1981

[सं. सीएमडी/13:11]

जय पाल सिंह, अनुभाग अधिकारी

New Delhi, the 17th October, 2016

**S.O. 2259.**—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :—

**SCHEDULE**

Sl. No.	Licences No. CM/L-	Grant Date	Name & Address of the Licensee	Title of the Standard	IS No.	Part	Sec.	Year
2.	L- 9512352219	07.04.2016	M/s. Dura Build Care Pvt. Ltd., Plot No.2376, Modern Industrial Estate, Part B, Bahadurgarh, Distt. Jhajjar - 124507, Haryana	Adhesives for Use With Ceramic Tiles and Mosaics	15477	-	-	2004
2.	L- 9512352118	13.04.2016	M/s. Amour India, GF-21, Gold Souk, Sushant Lok-1, Distt. Gurgaon - 122002, Haryana	Gold and Gold Alloys Jewellery/Artefacts – Fineness and Marking	1417	-	-	1999
3.	L- 9512352320	18.04.2016	M/s. Swastik Pipes Limited. 41 Km, Delhi Rohtak Road, VPO Asaudah, Distt : Jhajjar Haryana	Conduits for Electrical Installations Part 2 – Rigid Steel Conduits	9537	02	-	1981

[No.CMD/13:11]

JAI PAL SINGH, Section Officer

नई दिल्ली, 17 अक्टूबर, 2016

**का.आ. 2260.**—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम (5) के उपविनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है:-

**अनुसूची**

क्रम संख्या	लाइसेंस संख्या सीएम/एल	लाइसेंसधारी का नाम व पत्ता	लाइसेंस के अन्तर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द करने की तिथि
1.	एल-2713249	मै0 लवली ज्वैलर्स, मेन बाजार, बादशाहपुर गाँव, सोहना रोड, जिला गुडगावँ - 122001, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातुएं आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	06.05.2016
2.	एल-9512341113	मै0 एस आर एस ज्वैलर्स, (ए युनिट ऑफ एस आर एस लि0), कमेटी चौक, देवी मंदिर के पास, पलवल, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातुएं आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	12.05.2016

[सं. सीएमडी/13:13]

जय पाल सिंह, अनुभाग अधिकारी

New Delhi, the 17th October, 2016

**S.O. 2260.**—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled/suspended with effect from the date indicated against each:

**SCHEDULE**

Sl. No.	Licences No. CM/L	Name & Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence cancelled/suspension	Date of Cancellation
1.	L-2713249	M/s. Lovely Jewellers, Main Bazar, Badshahpur Village Sohna Road, Distt. Gurgaon - 122001,	Gold & Gold Alloys Jewellery/Artefacts - Fineness and Marking	06.05.2016

		Haryana		
2.	L-9512341113	M/s. SRS Jewells (A Unit of SRS Limited), Committee Chowck Near Devi Mandir, Palwal, Haryana	Gold & Gold Alloys Jewellery/Artefacts – Fineness and Marking	<u>12.05.2016</u>

[No. CMD/13:13]

JAI PAL SINGH, Section Officer

**श्रम एवं रोजगार मंत्रालय**

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2261.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 322/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.11.2016 को प्राप्त हुआ था।

[सं. एल-30012/29/2000-आईआर (एम)]

राजेश कुमार, अवर सचिव

**MINISTRY OF LABOUR AND EMPLOYMENT**

New Delhi, the 16th November, 2016

**S.O. 2261.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 322/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. ONGC Ltd. and others and their workman, which was received by the Central Government on 11.11.2016.

[No. L-30012/29/2000-IR (M)]

RAJESH KUMAR, Under Secy.

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,

Dated 19<sup>th</sup> September 2016**Reference: (CGITA) No. 322/2004**

1. The Group General Manager(P),  
ONGC Ltd., Ahmedabad Project, Chandkheda, Ahmedabad (Gujarat)
2. M/s. Parishram Labour Co.,  
Opp. Society Ltd., Shahibaugh, Ahmedabad (Gujarat)
3. M/s. Industrial Security Services,  
Parichay Shopping Centre, Near 'O' Cabin,

IOC Road, Post New Railway Colony,  
Ahmedabad (Gujarat) – 380001

...First Party

V/s.

The General Secretary,  
Gujarat Petroleum Employees Union,  
434/36, Gandhivas, Koba Road,  
Sabarmati, Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party : Kum. Santoshben

### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/29/2000-IR(M) dated 18.08.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

### SCHEDULE

“Whether the demand of the Gujarat Petroleum Employees Union, Ahmedabad to declare that the arrangement through which Shri Parmar Kalidas Ramabhai employed as Driver in ONGC, Ahmedabad Project is ‘sham and bogus’ and the concerned workman who has been terminated from service w.e.f. 16.02.1999 is entitled for reinstatement and absorption is legal and justified? If yes then to what relief the concerned workman is entitled to and from which date?”

1. The reference dates back to 18.08.2000. Second party submitted the statement of claim Ext. 10 on 18.10.2002 and first party submitted the written statement Ext. 12 on 22.12.2003. Since then both the parties have been absent. Therefore on 24.12.2010, the tribunal issued notice to the second party to appear and lead evidence but to no result. First party advocate sometimes appeared in the court on 20.12.2011, 07.03.2012, 13.09.2012, 17.04.2013, 22.07.2013, 18.11.2013, 10.02.2014 and 29.12.2015 but second party or his advocate never appeared in the tribunal for leading evidence. Thus it appears that second party is not inclined to prosecute the case. Therefore, the tribunal has no option but to dispose of the reference in the absence of the second party.

2. Therefore, the reference is dismissed in non-prosecution of the case by the second party and the reference is decided in negative as being not contested by the second party by adducing evidence.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2262.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 757/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.11.2016 को प्राप्त हुआ था।

[सं. एल-30011/4/2002-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 16th November, 2016

**S.O. 2262.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 757/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. ONGC Ltd. and others and their workman, which was received by the Central Government on 11.11.2016.

[No. L-30011/4/2002-IR (M)]

RAJESH KUMAR, Under Secy.

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,

Dated 21<sup>st</sup> September 2016

**Reference: (CGITA) No. 757/2004**

1. M/s. New Industrial Security Services,  
103,113, Omkar Chambers, 1<sup>st</sup> Floor,  
Opp. Railway Station, Surat (Gujarat)

2. The Executive Director,  
ONGC, WRBC, Makarpura Road,  
Baroda (Gujarat) – 390009

...First Party

**V/s.**

The Legal Secretary,  
Bharatiya Karmachari Sangh,  
Vishwakarma Shram Sadhna Trust, 101, Shirali Complex,  
Kothi Char Rasta, Anustu Tekri,  
Baroda (Gujarat) – 390001

...Second party

For the First Party : Shri K.V. Gadhia

For the Second Party : Shri S. Shah

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/4/2002-IR(M) dated 03.01.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the action of the management of ONGC Ltd., Baroda in terminating the services of S/Sh.(1)BhimaBhilla Chaudhary (2) ChandubhaiDhulabhaiParmar (3) Sakharam K. Shinde (4) BhikamSuram Valmiki, Security Guards w.e.f. 15.01.1997 through its Contractor M/s Singh Security Services is legal, proper and justified? If not, to what relief the concerned workmen are entitled to and what other directions are necessary in the matter?” AND “Whether the demand of the union to treat S/Sh. (1) BhimaBhilla Chaudhary (2) ChandubhaiDhulabhaiParmar (3) Sakharam K. Shinde and (4) BhikamSuram Valmiki as regular and permanent employees of ONGC Ltd., is legal, proper and justified? If so, what relief the concerned workmen are entitled to and from which date and what other directions are necessary in the matter?”

1. The reference dates back to 03.01.2002. The second party submitted the statement of claim Ext. 8 and first party also submitted the written statement on 13.01.2008. Since then, despite giving last opportunity on 04.01.2016, the second party did not appear and is also not leading evidence. Thus it appears that second party does not want to prosecute the case. Hence the reference is decided in affirmative.

2. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2263.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इण्डियन ऑयल कार्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 773/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.11.2016 को प्राप्त हुआ था।

[सं. एल-30011/113/2001-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 16th November, 2016

**S.O. 2263.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 773/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd. and their workman, which was received by the Central Government on 11.11.2016.

[No. L-30011/113/2001-IR (M)]

RAJESH KUMAR, Under Secy.

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

##### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,

Dated 19<sup>th</sup> September 2016

##### Reference: (CGITA) No. 773/2004

The Executive Director,  
Gujarat Refinery, IOCL Ltd.,  
P.O. Jawaharnagar,  
Baroda (Gujarat) – 391320

...First Party

V/s.

The General Secretary,  
Gujarat Refinery Kamdar Sangh,  
6/5, Refinery Township, P.O. Jawaharnagar,  
Baroda (Gujarat) - 391320

...Second Party

For the First Party : None

For the Second Party : None

### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/113/2001-IR(M) dated 22.04.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

### SCHEDULE

“Whether the action of the management of Gujarat Refinery, IOCL, Baroda in terminating the services of Shri R.H. Dave, Shri K.M. Bhrambhatt and Smt. Hiraben S. Solanki w.e.f. 30.05.1996, 06.03.1999 and 13.12.1995 respectively is legal, proper and justified? If not, to what relief the concerned three workmen are entitled to and from which date and what other directions are necessary in the matter?”

1. The reference dates back to 22.04.2002. The second party submitted the statement of claim Ext. 6 on 07.05.2003 and first party submitted the written statement on 10.02.2003. Since then both the parties have been absent. Therefore the tribunal has no option but to dismiss the reference in non-prosecution of the case by both the parties and the reference is in affirmative as being not contested by the second party.

2. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2264.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स अवीवा लाईफ इश्योरेंस कं. इंडिया लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 3/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.11.2016 को प्राप्त हुआ था।

[सं. एल-17012/29/2012-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 16th November, 2016

**S.O. 2264.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2013) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Aviva Life Insurance Company India Ltd. and their workman, which was received by the Central Government on 11.11.2016.

[No. L-17012/29/2012-IR (M)]

RAJESH KUMAR, Under Secy.

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR****Present:**

Shri B.C. Rath,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 3/2013**

No. L-17012/29/2012-IR (M), dated 11.01.2013

**Date of Passing Order – 26<sup>th</sup> July, 2016****Between:**

The Manager, HR,  
Aviva Life Insurance Company India Limited,  
Aditya Plaza Building, Unit-4,  
Sachivalaya Marg, Bhubaneswar

...1<sup>st</sup> Party-Management.**(And)**

Smt. Madhumita Dash,  
A.V. Residency, Plot No. 14,  
Opp. Indian Overseas Bank, Kalarangha,  
Patia, Bhubaneswar

...2<sup>nd</sup> Party-Workman.**Appearances:**

Shri Ashwini Kr. Biswal, ... For the 1<sup>st</sup> Party-Management  
Manager (HR)

None ... For the 2<sup>nd</sup> Party-Workman

**ORDER**

Authorized representative for both the 1<sup>st</sup> Party-Management is present. None is found present for the 2<sup>nd</sup> party-workman on repeated calls. Perusal of the case record reveals that the 2<sup>nd</sup> party-workman has filed its statement of claim on 13.06.2013, whereas the 1<sup>st</sup> Party-Management on being noticed filed its written statement on 16.12.2013. On the pleadings of the parties issues were settled on 12.02.2014. Thereafter the case was posted for evidence of the 2<sup>nd</sup> party-workman from time to time. But the 2<sup>nd</sup> party-workman is not attending the court since 17.9.2014 and not

adducing any evidence inspite of notice being issued to her on 25.1.2016. The authorized representative for the 1<sup>st</sup> Party-Management submits that the reference be returned to the Government unanswered in view of not attending the court by the 2<sup>nd</sup> party-workman for the last several dates. Heard the representative of the 1<sup>st</sup> Party-Management. As the 2<sup>nd</sup> party-workman is continuously not attending the court for the last several dates it is presumed that she is not interested to prosecute her dispute and there is no alternative than to pass a no-dispute order and accordingly a no-dispute order is passed in the case.

2. Accordingly the reference is answered in the above terms.

Dictated & Corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2265.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन ऑयल कॉर्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 354/2001, 383/200, 18/2008, 17/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.11.2016 को प्राप्त हुआ था।

[सं. एल-30011/29/2000-आईआर (एम),

सं. एल-30011/11/2001-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 16th November, 2016

**S.O. 2265.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 354/2201, 383/2001, 18/2008, 17/2008) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd. and their workman, which was received by the Central Government on 11.11.2016.

[No. L-30011/29/2000-IR (M),

No. L-30011/11/2001-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

##### Present:

Shri B.C. Rath,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar

##### Tr. INDUSTRIAL DISPUTE CASE NO. 354/2001

##### Between:

IBP Division, Talcher,  
Indian Oil Corporation Limited,  
Talcher

...1<sup>st</sup> Party-Management

##### -Versus-

The Joint Secretary, Federation of Unions of  
All India IBP Employees, Talcher Branch,  
At./Po. Deulbera Colliery, Angul

...2<sup>nd</sup> Party-Union

##### Tr. INDUSTRIAL DISPUTE CASE NO. 383/2001

##### Between:

IBP Division, Talcher,  
Indian Oil Corporation Limited,  
Talcher

...1<sup>st</sup> Party-Management

**-Versus-**

The Joint Secretary, Federation of Unions of  
All India IBP Employees, Talcher Branch,  
At./Po. Deulbera Colliery, Angul

...2<sup>nd</sup> Party-Union**I.D. Misc. Case No. 18/2008****Between:**

Shri Diptendra Mishra,  
S/o. Himansu Bhusan Mishra,  
At./Via Remua, Po. Talcher,  
Dist. Angul, Orissa-759 100

...Applicant

**-Versus-**

1. The Chairman-cum-Managing Director,  
Indian Oil Corporation Ltd., At. Indian Oil Bhawan,  
G-9, Ali Yavar Jung Narg, Bandra (East), Mumbai – 400 051.
2. The Dy. General Manager (HR-E), Indian Oil  
Corporation Ltd., IBP Division, 34-A Nirmal Chandra  
Street, Kolkatta – 700 013.
3. The Manager (SMS), Indian Oil Corporation Ltd.,  
IBP Division, SMS Explosives Support Plant, Talcher,  
213, Koilanagar, Po. Balanda, Dist. Angul, Orissa.

...Opp. Parties

**I.D. Misc Case No. 17/2008****Between:**

Shri Ajay Choudhury,  
S/o. Kesav Ram Choudhury,  
South Balanda Colony, Qr. No. J2A/2,  
Po. South Balanda, Dist. Angul – 759 116

...Applicant

**-Versus-**

1. The Chairman-cum-Managing Director,  
Indian Oil Corporation Ltd., At. Indian Oil Bhawan,  
G-9, Ali Yavar Jung Narg, Bandra (East), Mumbai – 400 051.
2. The Dy. General Manager (HR-E), Indian Oil  
Corporation Ltd., IBP Division, 34-A Nirmal Chandra  
Street, Kolkatta – 700 013.

The Manager (SMS), Indian Oil Corporation Ltd.,  
IBP Division, SMS Explosives Support Plant, Talcher,  
213, Koilanagar, Po. Balanda, Dist. Angul, Orissa.

...Opp. Parties

Date of Passing Award – 19<sup>th</sup> August, 2016**Appearances:**

M/s. B.C. Bastia, Advocate	...	For the 1 <sup>st</sup> Party- Management
Shri A.K.Mishra, Advocate	...	For the 2 <sup>nd</sup> Party- Union

**AWARD**

This common award is directed against the I.D. Case No. 354/2001 and 383/2001, and Misc. Case No. 17/2008 and 18/2008 since all the above cases have been registered out of a dispute in respect to the regularization of services of workman Shri Dipendra Mishra and Shri Ajay Choudhury in the establishment of the Management IBP Co. which is subsequently merged with Indian Oil Corporation Limited and disputes arising out of refusal of employment and termination of service of the above noted workmen during pendency of the reference cases.

2. I.D. Case No. 354/2001 and 383/2001 arise out of the references made by the Government of India Ministry of Labour exercising its powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the

Industrial Disputes Act, 1947 vide its letters No. L-30011/29/2000/IR(M), dated 26.05.2000 L-30011/11/2001/IR(M), dated 22.03.2001 respectively. The schedules of reference are as follows:-

“Whether the demand of the Union for regularization of Shri Dipendra Mishra, Shri Binod Kumar sahu and Shri Ajay Choudhury is justified? If yes, to what relief the workmen are entitled and from what date?”

“Whether the refusal of employment of S/Shri D. Mishra, A. Choudhury & B.K. Sahu from 16.3.2000 to 23.3.2000 by the management of IBP Co. Ltd., (Talcher Branch) is justified? If not, what relief they are entitled to?”

3. Misc. Case No. 17/2008 and 18/2008 have been registered under section 33-A of the I.D. Act at the instance of the applicant-workman as their services are alleged to have been terminated during pendency of the above reference cases.

4. Briefly stated, facts giving rise to the references as emerging from the statements submitted by the parties are as follows:-

I.B.P., which is presently merged with Indian Oil Corporation Limited, had established a S.M.S. Support Plant at Talcher to provide S.M.S. explosives to the mines of Mahanadi Coal Field Limited. The disputant workmen Shri Diptendra Kumar Mishra and Shri Ajay Choudhury were temporarily appointed as Field Assistant and Electrician-cum-Process Assistant appointed for a period from 7.3.1993 to 28.11.1993 and 1.1.1995 to 31.3.1995 respectively. Their services were renewed subsequently from time to time. Initially, Shri Mishra was paid a consolidated amount of Rs. 2200/- per month towards his wage and after November, 1996 the said wage was enhanced to Rs. 2500/- per month and in December, 1998 his basic was fixed at Rs. 2510/- with V.D.A. of 82.9 percentage of basic with Nil F.D.A and H.R.A. at the rate of 5% of the basic. In the case of Shri Choudhury his wage was fixed initially at Rs. 1800/- per month and the same was increased to Rs. 2500/- per month from December, 1996 to November, 1998 and December, 1998 onwards he was paid in basic scale of Rs. 2408/- with V.D.A 82.9 percentage of the basic, with Nil F.D.A. and H.R.A. at the rate of 5 % of the basic. Both of them continued in their respective posts with renewals from time to time without being permanently absorbed. They raised a dispute before the Assistant Labour Commissioner (Central) for regularization of their services through the 2<sup>nd</sup> party-Union when the 1<sup>st</sup> Party-Management did not consider their demands in that respect. It has been contended that both of them worked continuously and uninterruptedly for more than ten years. According to the 2<sup>nd</sup> party-Union as per terms and conditions of 3(1)(a) of the Certified Standing Order of the 1<sup>st</sup> Party-Management applicable to S.M.S. Plant, Talcher any temporary workman completing 240 days attendance in a year succeeding to his date of employment shall also be deemed to be a permanent workman. In that view of the matter both Shri Mishra and Shri Choudhury were deemed to be workmen of the 1<sup>st</sup> Party-Management though, their initial appointments were on temporary basis. In view of such position in the Standing Order benefits extended to the regular employee out of settlement is supposed to be extended to Shri Mishra and to Shri Choudhury on account of they being deemed permanent workmen. Accordingly, claim has been made for regularization of service of Shri Mishra and Shri Choudhury as against the posts of Field Assistant in Grade-IV posts having scale of Rs. 2,510-75/4-2810-85/8-3490-95/9-4345-110/4-4785 and against the post of S.S. Operator (Processman) Grade-III having scale of Rs. 2,408-60/4-2648-75/8-3248-85/8-3928-90/5-4378 respectively. It has also been prayed that both of them shall be extended all other service benefits as extended to other regular employees with effect from the date on which they are getting regular pay. It is also pertinent to mention here that while references made by the Government of India, Ministry of Labour are pending in this Tribunal for adjudication the services of the applicant-workman Shri D. Mishra and Shri Ajay Choudhury were terminated with effect from 31.3.2008 on the alleged ground of closure of S.M.S. Unit of the 1<sup>st</sup> Party-Management at Talcher. The above noted workmen were offered with compensation along with one month pay in lieu of notice, which they refused to accept, when their services were terminated. Since the applicant-workmen were removed from services without prior permission of this Tribunal in the event of pendency of a prior dispute, applications under section 33-A of the I.D. Act were preferred vide Misc. Cases under reference for declaring the action of the Management in dismissing the applicants-workmen as illegal and for their reinstatement with all service benefits including back wages.

5. So far the references are concerned the 1<sup>st</sup> party-Management has resisted the claim of the 2<sup>nd</sup> party-Union taking a stand that the Management established the S.M.S. Support Plant at Talcher to provide S.M.S. explosives to the mines of Mahanadi Coal Field Limited. As such operation of the Plant was depending upon the requirements of various mines of M.C.L. The Plant being a factory was registered under the Factories Act was established in the land owned by the M.C.L. The Plant being a Factory and separate Unit of I.B.P. & Co. presently I.O.C.L. is an independent establishment and the same is not being managed as an Undertaking of Central Government. As such, the Central Government is not an appropriate authority to make any reference to adjudicate the dispute between the employer and the employee, as a result of which the reference is not maintainable. It has also disowned the relationship of “employer and employee” between the parties taking a stand that the workman Shri Mishra and Shri Choudhury were engaged purely on temporarily and contract basis to meet the contingent and casual requirement of the S.M.S. Unit at Talcher.

They having not been appointed against any sanctioned post and through due process of recruitment cannot claim regularization of their service. It has been further pleaded that on personal request and approach of Shri Mishra and Shri Choudhury, the then Manager of the Plant engaged them on purely temporarily and contract basis on a consolidated wage. Their qualification was not verified or examined while they being appointed. The S.M.S. Plant at Talcher runs intermittently subject to allocation of work by various mines of the M.C.L. through tender. There are other competitors to the Management like, I.D.L. ORECA, and Nav Bharat Explosives who participate in the tender bidding and get allocation of work. As such operation of Plant of the 1<sup>st</sup> Party-Management at Talcher was shut down in 2001 and in between 2005 to 2008. Since the plant was closed in between 2006 to 2008 the temporary workmen were disengaged with payment of all statutory benefits as provided in the I.D. Act. As such regularizations of their service as claimed in the dispute is not maintainable in the eye of law factually as well as legally on account of they being never appointed against any sanctioned post through a legally recruitment process.

6. In Misc. Cases registered at the instances of the aggrieved applicant-workmen have been resisted with a stand that provisions of the Section 33 of the I.D. Act is not applicable to the present situation on account of the employment of the workmen was purely on temporary and intermittent basis and they were engaged taking into the need of the Unit during the relevant period. The applicants were not permanent or temporary employee of the 1<sup>st</sup> Party-Management and their engagement was like a contract worker exclusively engaged for the S.M.S. Plant at Talcher. Such engagement being contractual and purely temporary in nature is terminable at any point of time, more so when the S.M.S. Plant at Talcher was closed due to want of sufficient work order. Since the engagement of the applicants were linked to a specific project i.e. S.M.S. Unit at Talcher, the closure of the Project resulted in disengagement of the applicants. As such the provision of Section 33 of the I.D. Act is not attractable in the instant case.

7. In the light of above pleadings and contentions raised by the parties to the reference I.D. Cases and Misc. Cases, the issues that are to be determined are as follows:-

### ISSUES

1. Whether the references made by the Government of India, Ministry of Labour as well as Misc. Cases filed by the disputant-workmen are maintainable in the eye of law?
2. Whether the demand of regularization of service of the workmen Shri D. Mishra and A. Choudhury is legal and justified and the Tribunal has the jurisdiction to give necessary direction in that regard?
3. Whether the termination of the above named workmen during pendency of the references is not legal and justified and violation to the provision of Section 33-1(A)?
4. If not, to what relief the workmen are entitled?

8. The parties have adopted almost same set of evidences in all the four cases. The 2<sup>nd</sup> party-Union have examined disputant workmen namely Shri Diptendra Mishra and Shri Ajay Choudhury in I.D. Case No. 354/2001, and Shri Diptendra Mishra in I.D. Case No. 383/2001 and Shri Diptendra Mishra in Misc. Case No. 18/2008 and relied upon documents like xerox copy of his appointment letters dated 20.10.1998, 29.8.1994 and 23.12.1994, xerox copy of the letter dated 8.3.1995 to Plant Manager to Shri Diptendra Mishra, xerox copy of termination letter of Shri D. Mishra dated 18.3.2008, xerox copy of appointment letter of Shri Ajay Choudhury, dated 23.12.1994. xerox copy of letter dated 8.3.1995 of Plant Manager to Shri Ajay Choudhury, xerox copy of letter dated 18.3.2008 of termination order to Shri Ajay Choudhury, xerox copy of Pamphlet of I.B.P. Calcutta News letter October-December, 1998, xerox copy of letter dated 8.11.1993 to Shri D. Mishra, xerox copy of letter of Shri D. Mishra dated 19.3.2008 addressed to D.G.M. (HR), xerox copy of leave application of Shri D. Mishra from 3.6.1996 to 4.6.1996, xerox copy of letter dated 31.7.2008 of Coal India Contract to IOCL, xerox copy of allocation letter dated 01.09.2008 addressed to C.M. (B&C), Indian Oil Corporation (IBP Division), xerox copy of Certified Standing Order of I.B.P., xerox copy of letter dated 30.4.2007 of Under Secretary, Government of India, Ministry of Company Affairs, xerox copy of agreement dated 27.5.1994 between the IBP & MCL, xerox copy of running contract dated 18.5.2005 of Coal India Limited, xerox copy of 94<sup>th</sup> Annual Report of I.B.P., xerox copy of registration certificate for Dealers liable to pay value added tax w.e.f. 01.04.2005, xerox copy of letter dated 21.4.2007 of Dy. Manager (SMS) IBP Co. Ltd., xerox copy of letter dated 7.10.1998 of Sr. Manager, MCL, SMS Talcher, xerox copy of Factory License dated 6.12.2006, xerox copy of information manual of IOCL, xerox copy of information manual of IBP Co. Ltd., and xerox copy of long term settlement dated 27.1.1995. in I.D. Case No. 383/2001 and Ext.-1 to 20 in Misc. Case No. 18/2008

9. To rebut the case of the 2<sup>nd</sup> Party-Union the 1<sup>st</sup> Party-Management have examined one witness at the stage of deciding preliminary issue as to the maintainability of the reference case and Shri Debkinkar Baidya, Manager, In-charge of S.M.S. Plant at Talcher as M.W.-2 and exhibited documents like original copy of letter dated 9.8.2010 of Indian Oil Corporation Limited, xerox copy of the Factory Registration Certificate, xerox copy of renewal license with

the forwarding letter and appointment letter issued by the Plant Manager SMS Plant, Talcher in case No. I.D. 354/2001 and relied upon those documents in other cases also.

## **FINDINGS**

### **ISSUE NO. 2**

10. This issue being the crux of all disputes between the parties is taken for consideration first for the sake of convenience. The main contention of the 1<sup>st</sup> Party-Management is that the disputant-workmen were appointed temporarily/casually on term basis without following due procedure of recruitment. The appointments were not against any regular/permanent posts and qualification of the disputant workmen were not taken into consideration while giving appointment to them. Such appointments being illegal and an entry through back door cannot be regularized keeping in view the principles set out by the Hon'ble Apex Court in the case of Secretary, State of Karnataka – Versus- Uma Devi (3 2006 II LLJ 722 SC) and other reported cases. It has been contended that the Certified Standing Orders cannot prevail over Uma Devi's case or Article 14 and 16 of the Constitution and therefore, the concerned workmen cannot seek regularization of their service basing upon the provisions of Certified Standing Orders. The Certified Standing Orders can only confer a right to consider the regularization of service and the Tribunal has no jurisdiction to give necessary direction to the Management for regularization of their services.

11. Refuting the above contentions the learned counsel appearing for the disputant workmen and 2<sup>nd</sup> party-Union have strenuously argued that the case of Uma Devi does not denude the Industrial and Labour Courts of their statutory power to order permanency of the worker who have been victims of unfair labour practices on the part of employer where the posts on which they have been working exists. No principle has been propounded in the case over-riding the powers of the Industrial and Labour Courts in passing appropriate order under the Act, once unfair labour practice on the part of the employer under Item No. 6 of Schedule-IV is established. The Tribunal has the authority and jurisdiction to take affirmative action against erring employer practicing unfair labour practice and can give direction for regularization of service. According to the learned counsel in absence of specific pleading that the initial appointment not being in conformity to the rules of recruitment adopted by the 1<sup>st</sup> Party-Management was illegal and the said appointment order not being issued by a person having authority and the Management being not a Government, the appointment in the case in hand cannot be termed as illegal and as such, principles propounded in the case of Uma Devi are not applicable to the present case.

12. Undisputedly the Central Government in exercise of its power under section 10 of the Act has referred the existing industrial dispute between the concerned workmen and the 1<sup>st</sup> Party-Management to this Tribunal for proper adjudication. The contention advanced on behalf of the Management that the Tribunal has no power to pass such an award compelling the Management to regularize the service of the concerned workmen is wholly untenable in law and the said contention is contrary to the legal position. In the case between O.N.G.C. Ltd. –Appellant –versus Petroleum Coal Labour Union & Ors. And in the case between U.P. Power Corporation –versus- Bizli Mazdoor Sangha and Others and in catena of other cases it has been held by the Hon'ble Apex Court that the question as regards to the effect of the industrial adjudicators power was not directly an issue in Uma Devi case. But the fundamental logic in Uma Devi case is based on Article 14 of the Constitution of India. Though the industrial adjudicator can vary the terms of contract of the employment, it cannot do something which is violative of the Article 14. If the case is one which is covered by the concept of regularization, the same cannot be viewed differently.

13. In the case of Durgapur Casual Workers Union & Others –Versus- Food Corporation of India & Others in Civil Appeal No. 10856 of 2014 the Hon'ble Apex Court in para-35 of its judgement have observed in the following manner:-

“35. Umadevi (3) is an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or adhoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

36. Umadevi (3) does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi (3) cannot be held to have over ridden the powers of the Industrial and Labour Courts in passing appropriate order under section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established”.

Further, in the case of ONGC Ltd., -Versus- Petroleum Coal Labour Union and Others passed in Civil Appeal No. 3727 of 2015 the Hon'ble Apex Court have pronounced that the provisions of the Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Uma Devi's case. The issue pertaining unfair labour practice was neither the subject matter for decision nor was it

decided in Uma Devi's case. The powers of an Industrial Tribunal/Labour Court to adjudicate the industrial disputes on the points of disputes referred to it by the appropriate Government have been well established by legal principles laid down by the Hon'ble Apex Court in a catena of cases. No specific principle has been set out by the Hon'ble Apex Court that dispute relating to regularization of service of a workman whether appointed in back door method or in due process of recruitment cannot be adjudicated by the Tribunal/Court or the Tribunal has no jurisdiction to give any award for such regularization of service. The above issue was also under consideration before the Hon'ble Apex Court in the case of Ajay Pal Singh –versus- Haryana Warehousing Corporation in Civil Appeal No. 6327/2014 decided on 9<sup>th</sup> July, 2014. In the said case the Hon'ble Apex Court have clearly pronounced that the provisions of Industrial Disputes Act and the powers of the Industrial Tribunal and Labours Courts provided therein were not at all under consideration in Uma Devi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was decided in Uma Devi's case. The Hon'ble Court have further pronounced in the case of Durgapur Casual Workers Union that the Act is made for settlement of industrial disputes and for certain other purposes as mentioned therein. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for a long period without giving them the status and privileges of permanent employees. The Hon'ble Apex Court have quoted as follows:-

“22. Section 25-F of the Industrial Disputes Act, 1947 stipulates conditions precedent to retrenchment of workmen. A workman employed in any industry who has been in continuous service for not less than one year under an employer is entitled to benefit under said provision if the employer retrenches workman. Such a workman cannot be retrenched until he/she is given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice apart from compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. It also mandates the employer to serve a notice in the prescribed manner on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the official Gazette.

If any part of the provisions of Section 25-F is violated and the employer thereby, resorts to unfair trade practice with the object to deprive the workman with the privilege as provided under the Act, the employer cannot justify such an action by taking a plea that the initial appointment of the employee was in violation of Articles 14 of the Constitution of India.

23. Section 25-F of the Industrial Disputes Act relates to re-employment of retrenched workmen. Retrenched workmen shall be given preference over other persons if the employee proposes to employ any person.

24. We have held that provisions of Section 25-H are in conformity with the Articles 14 and 16 of the Constitution of India, though the aforesaid provisions (Article 14 and 16) are not attracted in the matter of re-employment of retrenched workmen in a private industrial establishment and undertaking. Without giving any specific reason to that effect at the time of retrenchment, it is not open to the employer of a public industrial establishment and undertaking to take a plea that initial appointment of such workman was made in violation of Articles 14 and 16 of the Constitution of India or the workman was a back-door appointee.

25. It is always open to the employer to issue an order of “retrenchment” on the ground that the initial appointment of the workman was not in conformity with Articles 14 and 16 of the Constitution of India or in accordance with rules. Even for retrenchment on such ground, unfair labour practice cannot be resorted and thereby workman cannot be retrenched on such ground without notice, pay and other benefits in terms of Section 25-F of the Industrial Disputes Act, 1947, if continued for more than 240 days in a calendar year.”

14. In the Umadevi case the Hon'ble Apex Court held that appointments made without following the due process of the rules relating to appointment did not confer any right on the appointees and courts cannot direct their absorption, regularization or re-engagement nor make their service permanent. It has been further held that a temporary, contractual/casual or a daily wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Article 14 and 16 of the Constitution. However, the Hon'ble Apex Court made one exception to the above position and the same is extracted below:-

53. “One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (1997 (1) SCR 12) : (AIR 1967 SC 1071) R.N. Nanjundappa (1972 (1) SCC 409) AIR 1972 SC 1767) and B.N. Nagarajan (1979 (4) SCC 507) (AIR 1979 SC 1676) and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention or orders of the courts or of Tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgement. In that context, the Union of India, the State Governments and their instrumentalities should take

steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under covr of orders of the courts or of tribunals and should further ensure that regular recruitment are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from the date.”

15. Keeping in view the above principles and observations made by the Hon’ble Apex Court in the case of Umadevi and other decisions as referred supra it can be safely said that the contentions advanced by the learned counsel appearing for the Management that this Tribunal has no jurisdiction to give necessary direction to the Management for regularization of service of aggrieved workmen has no substantial force. The Hon’ble Apex court in the a large number of decisions in the matter of grant of relief as claimed in the present one distinguished between a daily wager who does not hold a post and a permanent employee. The definition of workman as contained in Section 2(s) of the Act is wide and takes within its embrace all categories of workmen specified therein. The Act prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for a long period without giving them status and privileges of permanent employees if their initial appointment is not illegal and violative to the provisions of Article 14 of the Constitution. The Act is made for settlement of Industrial Disputes and for certain other purposes as mentioned therein including the dispute raised in the present reference as to the regularization of services of the disputant workmen. It cannot be over-sighted that Section 25-F of the Act stipulates conditions precedent to retrenchment of workmen and a workman employed in any industry continuously for more than 240 days in a year preceding to his retrenchment is entitled to the benefits as provided in the Section and violation of any provision of the Section resorts to unfair trade practice and the employer cannot justify such an action of retrenchment/termination of service by taking a plea that the initial employment of the employee was in violation of Article 14 and 16 of the Constitution. Similarly Section 25-H of the Act relates to re-employment of retrenched workmen. Retrenched workmen shall be given preference over other persons if the employee proposed to employ any person. Section 33-1 of the Act mandates that there should not be any change of condition of service under certain circumstances during pendency of the proceedings and no employer shall in regard to any matter connected with the pending dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding. It is well settled that it is always open to the employer to issue an order of retrenchment on the ground that the initial appointment of the workmen was not in conformity with the Article 14 and 16 of the Constitution or in accordance with the rules. Even for retrenchment on such ground, unfair labour practice cannot be resorted to and thereby workmen cannot be retrenched on such ground without notice pay and other benefits as provided in Section 25-F of the Act. In view of the above settled positions of law and settled principles this Tribunal can take up the reference for adjudication and can pass appropriate award, if the facts and circumstances emerging from the pleadings and evidence of the parties go to indicate that appointment of the disputant workmen was not illegal and violation to the Article 14 and 16 and if their irregular only. Similarly the Tribunal can pass award within its jurisdiction if it is established that termination or retrenchment of the disputant workmen is a violation to the provision of Section 33(1) of the Act in a matter of an application under section 33-A. In the above back-drops now it is to be examined whether the claim of the disputant workmen for regularization of service in the instant case is just and legal and if termination of their services during pendency of the reference in I.D. Case No. 354/2001 and 383/2001 is illegal and unlawful.

16. As it emerges from the pleadings and contentions raised by the parties as well as the documents relied upon by them that there is no serious dispute to the fact that S.M.S. Plant at Talcher is one of several Units established by the I.B.P. Co. In the event of the merger of I.B.P Co. with I.O.C.L. such S.M.S. Units including the Unit at Talcher are being managed by the I.O.C.L. Similarly there is no serious dispute to the claim of the applicants-workmen that they had been engaged as Filed Assistant/Administrative Assistant and Pump Operator in the S.M.S. Unit at Talcher. Undisputedly their engagement was purely on temporary basis for a period of three months with a consolidated wage when initial appointment letters were issued to them. It is not also disputed that their appointment/engagement was renewed from time to time and in this regard letters were issued by the Manager of the S.M.S. Unit at Talcher from time to time. In the oral as well as documentary evidence adduced by the parties on the above aspects goes to show that Shri Diptendra Mishra was appointed as Field Assistant by the Manager, S.M.S. Support Plant, Talcher, of I.B.P. Co. Limited with effect from 7.9.1993. His initial appointment was for the period of three months. But he was issued with the orders of extension subsequently from time to time till March, 1995 and thereafter he was allowed to continue in his service with change of his designation as Administrative Assistant till his service was terminated as alleged earlier with effect from 31.3.2008. Similarly the workman Shri Ajay Choudhury was initially appointed as Electrician-cum-Process Assistant for a period of three months with consolidated pay of Rs. 1800/- and such engagement was extended from time to time. Though no order of extension was issued after March, 1995 he was allowed to continue as Electrician with entrustment of work of process and boiler operations till his service was terminated with effect from 31.3.2008. Thus, both the disputant workmen were found employed for more than 10 years in the S.M.S. Plant of the 1<sup>st</sup> Party-Management at Talcher temporarily without any break of service between the date of their initial appointment and date of their retrenchment.

17. Though the 1<sup>st</sup> Party-Management has pleaded that the engagement of Shri Mishra and Shri Choudhury was purely on temporary and on need basis of the S.M.S. Plant at Talcher and their appointment being made by the Manager of the said Unit is a contractual one, no specific stand has been taken by the Management of I.O.C.L. that no sanctioned post of Field Assistant or Electrician and Process Assistant are available in any S.M.S. Units established else-where than the Unit at Talcher. It has not been pleaded by them that initial appointments given by the Manager of Talcher Unit was illegal and the same is not in conformity with the recruitment rules or procedure for such appointments. No evidence either in shape of oral or documentary has been advanced in the cases to establish that there was any rule or procedure or guidelines of the Management to fill up such posts of Field Assistant and Electrician and Process Assistant in S.M.S. Plant and the initial appointment was made in violation to such rules and procedure and the Manager of the S.M.S. Plant had no authority to issue such initial appointment letters including the letters of extension of appointment of the workmen in a particular pay structure. It cannot be also over-sighed that retrenchment letters of Shri Mishra and Choudhury do not suggest that retrenchment was made as the initial appointment was in violation of Article 14 and 16 of the Constitution or violation to the procedure or rule adopted by the Management for appointment to such posts. The termination/retrenchment is apparently on the ground of closure of the S.M.S. Unit at Talcher. But, it is emerging from the cross-examination of M.W.-1 that Manager and other regular staff posted at S.M.S. Plant at Talcher were adjusted in other similar Units of the 1<sup>st</sup> Party-Management during the closure of the Plant. The disputant workmen while being examined as W.W.-1 has categorically stated that “other workmen like him posted in other S.M.S. Units have been regularized in service and the same has not been denied by the Management. Rather M.W.-2 admits that as per IBP policy the workers of an Unit is interchangeable. The Management has not seriously challenged such oral and documentary evidence to the fact that similar temporary workmen were regularized in other units. It has been categorically stated by W.W.-1 that those workmen were junior to them and the Management has not denied the above version. It is also emerging from the oral evidence that the Plant was re-opened after its closure and functioned for five years till its closure in the year 2013. Had it been so, the disputant workmen could have been reemployed in the Plant for those period on preference basis pursuant to the provisions of Section 25-H of the Act. There is also no specific pleadings and evidence on the part of the 1<sup>st</sup> Party-Management to show that posts held by the disputant workmen were not available in other Units of 1<sup>st</sup> Party-Management though 50 such Units being run by the 1<sup>st</sup> Party-Management as admitted by M.W.-1. Similarly, no evidences have been adduced on behalf of the 1st Party-Management to establish that certain qualifications have been prescribed for holding such posts and the disputant workmen are not possessing such qualification for appointment to such posts. Admittedly there is no specific Certified Standing Order for the Plant at Talcher. But the documents relied upon by the disputant workmen clearly suggests that the Standing Order applicable to IBP is applicable to the workmen of the Plant at Talcher. Provisions of 3 of the said Standing Order provides that any temporary workmen who completed 240 days attendance in a year succeeding of his date of employment shall also be deemed to be a permanent workman. In view of such specific provisions in the Standing Order the disputant workmen having served for more than 10 years continuously cannot be presumed to be a daily wager or employed casually for a term of specific period in a specific project. Had it been so the appointment letters would have been indicated the same. In that view of the matter the pleadings of the Management that the disputant workmen were engaged as a daily wager or as a casual worker exclusively for the Unit at Talcher for specific project cannot be accepted.

18. In the case of Gujarat Agricultural University –Versus- Rathod Labhu Bechar and Others reported in AIR 2001 SC 706, their Lordships of the Hon’ble Supreme Court have held as follow:-

“If work is taken by the employer continuously from daily wage workers for a long number of years without considering their regularization for its financially gain as against employees legitimately claim, it is an unfair labour practice. Taking work, from daily wage worker or ad hoc appointee is always viewed to be only for a short period or as a stop gap arrangement, but we find new culture is growing to continue with it for a long time, either for financial gain or for controlling its workers from effectively with sword of Damocles hanging over their heads or to continue with favoured one”.

19. In the State of Karnatak and others –Versus- M.L. Kesari and others reported in AIR-2010 SC 2587, their Lordships of the Hon’ble Supreme Court in Para-7 & 11 have held as follows:-

“It is evident from the above that there is an exception to the general principles against ‘regularization’ enunciated in Umadevi (AIR 2006 SC 1806: 2006 AIR SCW 1991), if the following conditions are fulfilled (i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed and employee and continued him in service voluntarily and continuously for more than ten years. (ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been

selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”

“The object behind the said direction in Para 53 of Umadevi (AIR 2006 SC 1806 2006 AIR SCW 1991, para 44) is two fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi (2006 AIR SCW 1991) was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily wage/ad hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direct is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in Umadevi) without the protection of any interim order of any court or Tribunal, in vacant posts, possessing the requisite qualification, re entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi as a one-time measure.”

20. Keeping in view the above settled principles and facts and circumstances emerging from the pleadings of the parties as discussed in supra the initial appointments of the disputant workmen cannot be termed as illegal and in violation of Article 14 and 16 of the Constitution. At best, their appointment may be termed as irregular. It cannot be over-looked that both the disputant workmen had worked for more than ten years or more without the benefit or protection of any interim order of any Court or Tribunal. As per the principle laid down in the case of Umadevi a duty was cast upon the Management for taking steps to regularize the services of the disputant workmen whose appointments might be irregular as a one time measure. Besides, in view of admission of M.W.-1 that the Plant at Talcher was re-activated for some period in between 2008 to 2013, the retrenched workmen could have been offered employment. That apart the Management having other such units in different places could have employed the disputant workmen in any of its Unit other than at Talcher on accounts of its closure and their services could have been regularized. In the above back-draws it can be accepted that there was unfair trade practice on the part of 1<sup>st</sup> Party-Management for not regularizing the services of the disputant workmen in conformity to the provisions of its Certified Standing Order. Therefore, the claim for regularization of services of the disputant workmen appears to be justified.

### **Issue No. 3**

21. Coming to the dispute of retrenchment/termination of service of the disputant workmen it is seen that the disputant workmen were offered compensation and notice pay while they were retrenched. They refused to accept such compensation and notice pay. It is the contention of the Management that such termination or retrenchment cannot be a violation of Section 33(1) of the Act in view of closure of the S.M.S. Plant at Talcher due to insufficient work order and in the event of offer of compensation and notice pay to the workmen as contemplated under section 25-F of the Act, though acceptance of such compensation and notice pay was refused by the workmen. Undisputedly termination/retrenchment was made on the above contention during the pendency of the references such as I.D. Case No. 354/2001 and 383/2001. Section 33 of the Act provides “During the pendency of any proceeding before a Tribunal in respect of an industrial dispute no employer shall:-

“In regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings.”

Thus, there is a clear prohibition in Section 33-1(a) against altering conditions of service by the employer under the circumstances specified except with the written permission of the Tribunal or other authority therein described. In order to attract Section 33-1(a) it is required to be established that (i) there is a proceeding in respect of an industrial dispute pending before the Tribunal, (ii) Conditions of service of the workmen applicable immediately before the commencement of the Tribunal proceeding are alter, (iii) alternation of the conditions of service is in regard to matter connected with the pending industrial dispute (iv) the workmen whose conditions of service are altered are concerned in the pending industrial dispute and lastly (v) the alternation of the conditions of service is to the prejudice of the workman. The first feature is admittedly present in this case since action has been taken by the employer/the Management in retrenching the disputant workmen during the pendency of a proceeding before the Tribunal arising out of a reference under section 10 of the Act wherein dispute was in respect to regularization of service of the disputant workmen. The regularization of service of the disputant workmen having been a point of dispute in the pending reference and such interest being involved in the said proceeding, there should not be any alteration of conditions of their service without prior permission of the Tribunal. Having been retrenched either with the compliance of provisions of section 25-F or without the same there is an alteration of condition of service during the pendency of such reference. Thus, all features of Section 33(1) are present in the instant case. It is well settled that retrenchment may not, ordinarily,

under all circumstances, amounts to alteration of condition of service. For example when a dispute for revision of wage is pending before the Tribunal and on account of closure of the said industry the worker therein have to be retrenched by the employer, such retrenchment cannot amount to alteration of conditions of service. But in the present case the subject-matter of the dispute involving regularization of service is directly connected with the dispute pending before the Tribunal and tampering with the status-quo anti of these disputant workmen is a clear alteration of conditions of their service. Their service condition during the pendency of the proceeding before this Tribunal is supposed to continue. If the employer/Management wanted to effect a change of their system or condition of service, it was incumbent upon the Management to obtain prior permission of this Tribunal while making change of conditions of service of the disputant workmen i.e. prior permission is required to be taken from the Tribunal while retrenching or terminating the above workmen even though they are stated to be in temporary employment. The character of the temporary employment of the workmen being a direct issue in the Tribunal, that condition of employment, however insecure, must subsists during pendency of the dispute before the Tribunal and it cannot be altered to the prejudice of the workmen by putting an end to their temporary condition. This could have been done only with the express permission of the Tribunal. It is well settled in the case of Gujarat Agricultural University and All Gujarat Kamdar Karmachari Union in Civil Appeal No. 7358 of 2000 that the expression “conditions of service” is of wide range and relates to the workmen who may be temporary, ad hoc, daily rated, permanent, semi permanent or otherwise. In view of such settled positions of law and principles, even it is accepted that the disputant workmen were casual worker and the Unit was required to be closed for want of sufficient work, the Management was required to take the Tribunal into confidence before terminating/retrenching the workmen as contemplated under Section 33-1(a) of the Act. Having failed to comply the above provisions the termination/retrenchment can be safely said to be illegal and unjust. Accordingly this issue is answered against the 1<sup>st</sup> Party-Management.

#### **Issue No. 1**

22. So far as the Issue of maintainability is concerned it is pertinent to mention here that such issue being heard preliminarily and disposed of vide order of this Tribunal dated 14.05.2010 in favour of the 2<sup>nd</sup> party-Union and the Civil Writ preferred against such order by the Management having been dismissed by the Hon’ble High Court of Orissa in W.P.(C) No. 14121/2010 there needs no further elaboration and discussion on the said issue. That apart there is no serious dispute to the fact that the I.B.P. Company has been merged with the Indian Oil Corporation Limited which has been established by the Central Government. The S.M.S. Plant in question at Talcher having been established by the I.B.P. is undisputedly being presently managed by the Management of I.O.C.L. Section 2(a)(1) of the I.D. Act defines the “appropriate Government” it is an inclusive definition which provides that in relation to any industrial dispute concerning any Industry carried on by or under the authority of the Central Government or by railway company etc., the Central Government is the appropriate Government. The Hon’ble High Court in its order under reference have categorically observed that the findings arrived by this Tribunal to the effect that the Management-company is under the control of the Central Government and the Central Government, therefore is the appropriate Government. In that view of the matter the issue of maintainability having been answered positively in favour of the 2<sup>nd</sup> party-Union needs no further answer/finding.

#### **Issue No. 4**

23. Law is well settled that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. At the same time it has been now well settled that despite a wide discretionary power conferred upon the industrial courts under Section 11-A of the Act, the relief of reinstatement with full back wages should not be granted automatically because the termination or retrenchment was illegal. Grant of relief depends on the facts and circumstances emerging in each case. In the case at hand the Management has not seriously refuted the claim of the disputant workmen that workmen junior to them and in similar situations were regularized in service in other S.M.S. Units. Their services were terminated without prior permission of the Tribunal while a reference arising out of a dispute for regarding regularization of their service is pending in this Tribunal. Having regard to the peculiar facts and circumstances of the case and the fact that the disputant workmen did not render any service to the Management after their termination it would be fair and reasonable to direct the 1<sup>st</sup> Party-Management to reinstate the disputant workmen to their posts either in the S.M.S. Unit at Talcher or in case of its closure in other Units established in other places and to consider regularization of their service. Besides the disputant workmen are entitled to receive their 75% of the wage which they were receiving at the time of termination and they are also entitled to the benefits of continuity of service.

24. Reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2266.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स स्टील अथॉरिटी ऑफ इंडिया लिमिटेड (सेल) एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 113/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.11.2016 को प्राप्त हुआ था।

[सं. एल-27011/7/2015-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 16th November, 2016

**S.O. 2266.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 113/2015) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Steel Authority of India Ltd. (SAIL) and others and their workman, which was received by the Central Government on 11.11.2016.

[No. L-27011/7/2015-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 22<sup>nd</sup> September, 2016

**Present :** K. P. PRASANNA KUMARI, Presiding Officer

#### Industrial Dispute No. 113/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of SAIL Refractory Company Ltd. and their workman)

#### BETWEEN :

The General Secretary : 1<sup>st</sup> Party/Petitioner Union  
Salem District Magnesite Pattali Thozhir Sangam  
Arabic College Building, Vellakkalpatti  
Salem-636012

#### AND

1. The Chief Operating Officer : 2<sup>nd</sup> Party/1<sup>st</sup> Respondent  
SAIL Refractory Co. Ltd.  
Salem-636005
2. M/s. KRSS Manpower Services : 2<sup>nd</sup> Party/2<sup>nd</sup> Respondent  
Contractor, Sengaradu  
Thatiengarpatty (PO)  
Salem-636012
3. M/s. RRT Enterprises : 2<sup>nd</sup> Party/3<sup>rd</sup> Respondent  
Contractor, Senaigoundanoor  
Moongilpalia (PO)  
Salem-636012
4. M/s. SMV Enterprises : 2<sup>nd</sup> Party/4<sup>th</sup> Respondent  
Contractor, Senaigoundanoor  
Moongilpali (PO)  
Salem-636012
5. M/s. Rajarajeshwari Enterprises : 2<sup>nd</sup> Party/5<sup>th</sup> Respondent  
Contractor, Senaigoundanoor

Moongilpali (PO)  
Salem-636012

6. M/s. Iyyanarappan Enterprises : 2<sup>nd</sup> Party/6<sup>th</sup> Respondent  
Contractor, M/s Avvamperumalpatty  
Palayur  
Salem

#### Appearance:

- For the 1<sup>st</sup> Party/Petitioner Union : M/s. A. Nagarathinam, Advocate  
For the 2<sup>nd</sup> Party/1<sup>st</sup> Respondent : M/s. A. Ilango, Advocate  
For the 2<sup>nd</sup> Party/2<sup>nd</sup> to 6<sup>th</sup> Respondent : M/s. M. Nallathambi (Set Ex-parte)

#### AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-27011/7/2015-IR (M) dated 14.07.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

*“Whether the action of the Management of SRCL and their Contractors regarding denial of 16.33% bonus to their workers is justifiable or not? To what relief the workmen are entitled?”*

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 113/2015 and issued notices to both sides. The petitioner and First Respondent had entered appearance through their counsel and have filed Claim and Counter Statement respectively. Respondents 2 to 6 remained ex-parte.

3. The averments in the Claim Statement filed by the Petitioner Union in brief are these:

The petitioner is a registered Trade Union formed for the welfare of its members who are working in the Magnesite industries. The First Respondent is manufacturing Magnesite Fire Bricks. Respondents 2 to 6 are Contractors having works contract with the First Respondent. The First Respondent is in the practice of deducting bonus amount every month from the monthly bill of the Contractors. The amount is kept under a separate fund and will be paid directly to the workers by the First Respondent. The First Respondent has paid bonus @ 12% for the year 2010-2011. During discussion regarding bonus for the year 2011-2012 the petitioner union had demanded bonus @ 16.33% and the previous management had agreed to deduct amount @ 16.33% towards bonus from the bills of the Contractors. Even after change of Management, with the First Respondent in Management, deduction was being made @ 16.33% from 16.12.2011 to 31.03.2012. The First Respondent has to release the deducted amount of 16.33% and pay the same to the contract labourers towards bonus for the year 2011-2012. But the First Respondent has not made payment. The workers had to go on strike on 08.11.2012 on the issue of bonus for the year 2011-2012. Subsequently, the First Respondent issued a letter on 09.11.2012 stating that bonus applicable in respect of contract labourers under different Contractors will be disbursed by the Contractors from 09.11.2012. The Petitioner Union raised Industrial Dispute regarding payment of bonus @ 16.33% and the First Respondent agreed to disburse bonus @ 12% so the contract workers resumed duty on 14.11.2012. It is the duty of the First Respondent to disburse the deducted amount of 16.33% and to pay the same to the contract labourers towards bonus for the year 2011-2012. An award may be passed directing the Respondents to disburse the deducted amount of bonus @ 16.33% from the bills of the Contractors for the year 2011-2012 to the members of the Petitioner Union.

4. The First Respondent has filed Counter Statement contending as below:

The petitioner has no locus-standi to raise the dispute against the First Respondent. there is no employer-employee relationship between the members of the Petitioner Union and the First Respondent. The petitioner is representing the contract workers engaged by Respondents 2 to 6 who are the Contractors. The First Respondent is not the employer within the meaning of Section-2(14) of the Payment of Bonus Act. No Industrial Dispute exists within the meaning of Section-2(K) of the Industrial Disputes Act. So the reference itself is erroneous and illegal.

5. The First Respondent is a subsidiary of Steel Authority of India Ltd. and is engaged in the mining of Magnesite and manufacturing of various refractory products. Earlier the Company was owned by Burn Standard Co. Ltd. The Company had turned sick and it was taken over by the Government of India. During the year 2011-2012 the Company had functioned under two different Managements, initially under Burn Standard Co. Ltd. and subsequently from 16.12.2011 to 31.03.2012 under the Management of Sail Refractory Company. The First Respondent is engaging Contractors in Mines for carrying out various contractual jobs. During the Accounting Year 2011-2012, 21 Contractors were awarded contracts for doing various contract jobs in the Mines. As per the conditions of the Contract it is the responsibility and liability of the Contractors to fulfill the various obligations imposed under the Labour Welfare

Legislations including Payment of Bonus. So it is the liability of the Contractors to pay bonus to the contract workers engaged by them. Employer-Employee relationship subsists only between the Contractors and the members of the Petitioner Union. The Contractors were maintaining a Welfare Fund account for depositing the amount pertaining to the various liabilities including bonus. The First Respondent used to deduct only the Income Tax amount from the bill amount payable to the Contractors. Amount was not deducted towards bonus as alleged by the petitioner. In the year 2011-2012, the 21 Contractors of the year had authorized two Contractors to operate the account maintained as Welfare Fund of the workers. The First Respondent is not connected with this. The First Respondent never paid bonus directly to the workers as alleged. The First Respondent never agreed to deduct 16.33% from the bills of the Contractors towards bonus. No such amount was deducted also at any time. It is not true that the First Respondent has paid 12% bonus for the year 2010-2011 as stated in the Claim Statement. Bonus was paid by Respondents 2 to 6. The petitioner is not entitled to any relief against the First Respondent.

6. Respondents 2 to 6 have remained ex-parte.

7. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W8 and Ext.M1 to Ext.M84.

8. **The points for consideration are:**

(i) Whether the First Respondent is liable to pay bonus @ 16.33% to the workers of the Petitioner Union for the year 2011-2012.

(ii) What if any is the relief to which the petitioner is entitled

### **The Points**

9. The members of the petitioner union are working under Respondents 2 to 6 who have undertaken various contract jobs with the First Respondent during the year 2011-2012. During this Financial Year the First Respondent was under two Managements. Initially it was under the Management of Burn Standard Co. The First Respondent Company had become sick and was taken over by the Government of India and made a subsidiary of Steel Authority of India. Thus for the period from 16.12.2011 to 31.03.2012 the Management was with the First Respondent.

10. The Petitioner has claimed that its members who are workmen under Respondents 2 to 6 are entitled to bonus @ 16.33% during the year 2011-2012. According to the petitioner there was a discussion with the earlier Management of the First Respondent and it has agreed to deduct amount @ 16.33% from the bills of the Contractors for the payment of bonus. They have deducted the amount also. This deduction was continued even after the First Respondent came to be in Management. According to the petitioner, the amount so deducted for the purpose of payment of bonus for the year 2011-2012 is retained by the First Respondent. After the workmen had gone on strike 8.33% was released as bonus. However, the balance amount has not been paid. The dispute is raised claiming that the First Respondent is liable to release the balance amount also to the concerned workmen.

11. The First Respondent has raised a preliminary objection in its counter statement that the dispute is not maintainable against it. This was considered as a Preliminary Issue and a finding has been already entered.

12. The very basis of the claim of the petitioner is that the First Respondent has been deducting @ 16.33% from the bills of the Contractors as bonus amount and this is retained by them. So the initial question to be considered is whether such deduction has been made by the First Respondent at all. The evidence of WW1, General Secretary of the Petitioner Union and MW1, an Officer of the First Respondent and also the documents produced make it clear that no such deduction was made by the First Respondent. During cross-examination WW1 has admitted that he did not produce any document to show that the First Respondent has agreed to pay bonus @ 16.33% for the year 2011-2012. According to the petitioner a separate account was being maintained by the First Respondent in which the deducted amount was deposited for payment of bonus to the workers. WW1 has stated during his cross-examination that he did not produce any document to show that any such account is maintained by the 1<sup>st</sup> Respondent also. There is no documentary evidence on the part of the petitioner to show that amount @ 16.33% was deducted by the First Respondent from the bills of the Contractors for payment towards bonus.

13. The First Respondent has produced documents to show that amount was not deducted from the bills of the Contractors as claimed by the petitioner. The statement regarding payments made to the different Contractors and the deduction effected from the Contractors are produced by the First Respondent. The Work Orders given to Respondents 2 to 6 also are produced. These Work Orders are Ext.M1 to Ext.M9. Ext.M11 is the statement of payment and deduction effected in respect of the Second Respondent. Ext.M12 & Ext.M15 are the copies of the bill submitted by the Second Respondent. Ext.M13, Ext.M16 and Ext.M19 are certificates under Form-16A of the Income Tax Act for payment of TDS for the Second Respondent. These statements would show that only tax that is to be deducted at source as per law was deducted by the First Respondent from the bill of the Second Respondent. Similar documents in respect of the Respondents 3 to 6 are also produced by the First Respondent. The Form -16A certificates and other

documents in respect of different Contractors would reveal that the First Respondents did not make any deduction other than Tax at Source from the bills of Respondents 2 to 6 who are the Contractors.

14. The claim of the Petitioner Union for bonus from the First Respondent seemed to be on the basis of Ext.W8 also. Though this document is described as a circular of the First Respondent, this is in fact only a recommendation made by an Officer of the First Respondent regarding recovery to be made from the Contractors towards statutory and other dues to the workmen. As seen from this, the earlier practice was to deduct various amount including Provident Fund, etc. from the Contractors' bill by the Management of the Principal Employer. Subsequently, this practice was stopped and a Contract Workers Welfare Fund was created. This is the fund that is referred to in the Counter Statement of the First Respondent. In Ext.W8 letter, MW1 who has issued this letter has suggested that the old practice of recovery of amount from the Contractors' bill and retaining the amount in the custody of Company Management should be restored. However, there is nothing to show that this recommendation was accepted by the Management or that it has restored the practice of deducting amount towards bonus, etc. from the bills of the Contractors. So Ext.W8 is not of any use in establishing the case of the petitioner that the First Respondent has been deducting amount from the bills of the Contractors and retaining the amount with it.

15. It is admitted by the petitioner that 8.33% has been received by the workmen as bonus for the year 2011-2012. Ext.W3 is the circular issued by the First Respondent stating that the bonus payable is being disbursed by the respective Contractors in Red Hills Mines from 09.11.2012 onwards. It is admitted by WW1 that this bonus was paid by the Contractors themselves. If amount was retained by the First Respondent there was no necessity for the Contractors to make the payment it should have been done by the First Respondent.

16. The First Respondent is not the employer of the concerned workmen as per the Payment of Bonus Act. The First Respondent was not paying wages to the workmen who are members of the Petitioner Union. On the other hand, they were receiving wages from the respective Contractors only. So the claim of the petitioner for bonus from the First Respondent has no basis. The petitioner is not entitled to any relief.

In view of my discussion above the reference is answered against the petitioner. An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22<sup>nd</sup> September, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

#### **Witnesses Examined:**

For the 1<sup>st</sup> Party/Petitioner Union : WW1, Sri M.P. Sadasivam

For the 2<sup>nd</sup> Party/Management : MW1, Sri S. Sridharan

#### **Documents Marked:**

##### **On the petitioner's side**

Ex.No.	Date	Description
Ext.W1	17.08.2012	Petition filed by the Petitioner Union
Ext.W2	09.11.2012	Strike Notice given by the Petitioner Union
Ext.W3	09.11.2012	Circular issued by the Respondent Management
Ext.W4	10.11.2012	Submission made by the Petitioner Union
Ext.W5	14.11.2012	Letter submitted by the Petitioner Union
Ext.W6	18.02.2013	Submission of list of contract workers under the Respondents 2 to 6
Ext.W7	14.07.2015	Order of reference by the Government of India
Ext.W8	04.11.2011	Circular issued by the Respondent Management

##### **On the Management's side**

Ex.No.	Date	Description
Ext.M1	02.07.2011	Work order issued to the 2 <sup>nd</sup> Respondent
Ext.M2	02.07.2011	Work order issued to the 3 <sup>rd</sup> Respondent
Ext.M3	02.07.2011	Work order issued to the 4 <sup>th</sup> Respondent

Ext.M4	02.07.2011	Work order issued to the 5 <sup>th</sup> Respondent
Ext.M5	27.09.2011	Work order issued to the 6 <sup>th</sup> Respondent
Ext.M6	03.10.2011	Work order issued to the 2 <sup>nd</sup> Respondent
Ext.M7	03.10.2011	Work order issued to the 3 <sup>rd</sup> Respondent
Ext.M8	03.10.2011	Work order issued to the 4 <sup>th</sup> Respondent
Ext.M9	03.10.2011	Work order issued to the 5 <sup>th</sup> Respondent
Ext.M10	Nil	Terms and Conditions and General conditions and Special Conditions given alongwith work order as Annexure “A”, “B” & “C”
Ext.M11	Nil	Statement of payments made and deduction effected for 2 <sup>nd</sup> Respondent
Ext.M12	04.05.2011	Copy of Bill submitted by 2 <sup>nd</sup> Respondent
Ext.M13	-	Form 16A Certificate for payment of TDS for 2 <sup>nd</sup> Respondent
Ext.M14	07.05.2011	Payment made to the 2 <sup>nd</sup> Respondent
Ext.M15	02.08.2011	Four Bills submitted by 2 <sup>nd</sup> Respondent
Ext.M16	-	Form 16A Certificate for payment of TDS for 2 <sup>nd</sup> Respondent
Ext.M17	06.08.2011	Two payments made to 2 <sup>nd</sup> Respondent
Ext.M18	02.12.2011	Four Bills submitted by 2 <sup>nd</sup> Respondent
Ext.M19	-	Form 16A Certificate for payment of TDS for 2 <sup>nd</sup> Respondent
Ext.M20	05.12.2011	Payment made to 2 <sup>nd</sup> Respondent
Ext.M21	14.12.2011	Payment made to 2 <sup>nd</sup> Respondent
Ext.M22	Nil	Statement of payments made and deduction effected for 2 <sup>nd</sup> Respondent
Ext.M23	05.05.2011	Bill submitted by 3 <sup>rd</sup> Respondent
Ext.M24	-	Form 16A Certificate for payment of TDS for 3 <sup>rd</sup> Respondent
Ext.M25	09.05.2011	Payment made to 3 <sup>rd</sup> Respondent
Ext.M26	04.11.2011	Bill submitted by 3 <sup>rd</sup> Respondent
Ext.M27	02.12.2011	Bill submitted by 3 <sup>rd</sup> Respondent
Ext.M28	-	Form 16A Certificate for payment of TDS for 3 <sup>rd</sup> Respondent
Ext.M29	07.12.2011	Payment made to 3 <sup>rd</sup> Respondent
Ext.M30	14.03.2012	Bill submitted by 3 <sup>rd</sup> Respondent
Ext.M31	-	Form 16A Certificate for payment of TDS for 3 <sup>rd</sup> Respondent
Ext.M32	14.03.2012	Payment made to 3 <sup>rd</sup> Respondent
Ext.M33	20.03.2012	Payment made to 3 <sup>rd</sup> Respondent
Ext.M34	Nil	Statement of payments made and deduction effected for 4 <sup>th</sup> Respondent
Ext.M35	05.05.2011	Bill submitted by 4 <sup>th</sup> Respondent
Ext.M36	-	Form 16A Certificate for payment of TDS for 4 <sup>th</sup> Respondent
Ext.M37	07.05.2011	Payment made to 4 <sup>th</sup> Respondent
Ext.M38	05.08.2011	Bill submitted by 4 <sup>th</sup> Respondent
Ext.M39	-	Form 16A Certificate for payment of TDS for 4 <sup>th</sup> Respondent
Ext.M40	09.08.2011	Payment made to 4 <sup>th</sup> Respondent
Ext.M41	05.12.2011	Two bills submitted by 4 <sup>th</sup> Respondent
Ext.M42	-	Form 16A Certificate for payment of TDS for 4 <sup>th</sup> Respondent
Ext.M43	07.12.2011	Payment made to 4 <sup>th</sup> Respondent
Ext.M44	13.03.2012	Bill submitted by 4 <sup>th</sup> Respondent

Ext.M45	-	Form 16A Certificate for payment of TDS for 4 <sup>th</sup> Respondent
Ext.M46	14.03.2012	Payment made to 4 <sup>th</sup> Respondent
Ext.M47	20.03.2012	Payment made to 4 <sup>th</sup> Respondent
Ext.M48	Nil	Statement of payments made and deduction effected for 5 <sup>th</sup> Respondent
Ext.M49	04.08.2011	Bill submitted by 5 <sup>th</sup> Respondent
Ext.M50	-	Form 16A Certificate for payment of TDS for 5 <sup>th</sup> Respondent
Ext.M51	09.08.2011	Payment made to 5 <sup>th</sup> Respondent
Ext.M52	02.12.2011	Bill submitted by 5 <sup>th</sup> Respondent
Ext.M53	05.12.2011	Bill submitted by 5 <sup>th</sup> Respondent
Ext.M54	-	Form 16A Certificate for payment of TDS for 4 <sup>th</sup> Respondent
Ext.M55	07.12.2011	Payment made to 5 <sup>th</sup> Respondent
Ext.M56	13.03.2012	Bill submitted by 5 <sup>th</sup> Respondent
Ext.M57	-	Form 16A Certificate for payment of TDS for 5 <sup>th</sup> Respondent
Ext.M58	14.03.2012	Payment made to 5 <sup>th</sup> Respondent
Ext.M59	20.03.2012	Payment made to 5 <sup>th</sup> Respondent
Ext.M60	Nil	Statement of payments made and deduction effected for 6 <sup>th</sup> Respondent
Ext.M61	05.05.2011	Seven Bills submitted by 6 <sup>th</sup> Respondent
Ext.M62	-	Form 16A Certificate for payment of TDS for 6 <sup>th</sup> Respondent
Ext.M63	07.05.2011	Payment made to 6 <sup>th</sup> Respondent
Ext.M64	04.08.2011	Seven Bills submitted by 6 <sup>th</sup> Respondent
Ext.M65	-	Form 16A Certificate for payment of TDS for 6 <sup>th</sup> Respondent
Ext.M66	06.08.2011	Payment made to 6 <sup>th</sup> Respondent
Ext.M67	30.11.2011	Five Bills submitted by 6 <sup>th</sup> Respondent
Ext.M68	05.12.2011	Five Bills submitted by 6 <sup>th</sup> Respondent
Ext.M69	-	Form 16A Certificate for payment of TDS for 6 <sup>th</sup> Respondent
Ext.M70	06.12.2011	Payment made to 6 <sup>th</sup> Respondent
Ext.M71	03.02.2012	Three bills submitted by 6 <sup>th</sup> Respondent
Ext.M72	-	Form 16A Certificate for payment of TDS for 6 <sup>th</sup> Respondent
Ext.M73	13.03.2012	Payment made to 6 <sup>th</sup> Respondent
Ext.M74	08.11.2012	Complaint given by the First Respondent to Inspector of Police, Salem-5 seeking police protection
Ext.M75	09.11.2012	Letter sent by the Asstt. Commissioner of Labour (C) Chennai to the First Respondent
Ext.M76	09.11.2012	Circular issued by the First Respondent
Ext.M77	06.05.2012	Reply submitted to the Asstt. Commissioner of Labour (C) Chennai
Ext.M78	19.02.2016	Letter sent by the First Respondent to the United Bank of India
Ext.M79	20.02.2016	Reply letter sent by the United Bank of India to the First Respondent
Ext.M80	-	Acquittance given by contract workers for Receipt of Bonus amount from Respondent-2 for 2011-2012
Ext.M81	-	Acquittance given by contract workers for Receipt of Bonus amount from Respondent-3 for 2011-2012
Ext.M82	-	Acquittance given by contract workers for Receipt of Bonus amount from Respondent-4 for 2011-2012
Ext.M83	-	Acquittance given by contract workers for Receipt of Bonus amount from Respondent-5 for 2011-2012

Ext.M84 - Acquittance given by contract workers for Receipt of Bonus amount from Respondent-6 for 2011-2012.

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2267.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स कुद्रेमुख आयर्न ओर कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलूर के पंचाट (संदर्भ संख्या 92/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.11.2016 को प्राप्त हुआ था।

[सं. एल-26012/2/2007-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 16th November, 2016

**S.O. 2267.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 92/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Kudremukh Iron Ore Company Ltd. and their workman, which was received by the Central Government on 11.11.2016.

[No. L-26012/2/2007-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 19/09/2016

**PRESENT :** Shri V S RAVI, Presiding Officer

**C R No. 92/2007**

#### I Party

The General Secretary,  
Karnataka Coffee Curing &  
General Workers Union,  
(AITUC) Tamil Colony,  
Chickmagalur, Karnataka

#### II Party

The Chairman & Managing  
Director, K I O C L,  
II Block, Koramangala,  
Bangalore – 560 034

#### AWARD

1. The Central Government vide Order No. L-26012/2/2007-IR(M) dated 16.07.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

#### SCHEDULE

“Whether the action of the management of Kudremukh Iron Ore Company Ltd., in not regularising the services of the workers mentioned in the list enclosed is legal and correct? If not, to what relief they are entitled?”

- 1) In the course of proceeding a joint memo dated 08.08.2016 has been filed and in the concluding Paras namely 08, 09, 10, 11 it is specifically stated as follows:....
  - “8. The 1<sup>st</sup> party Union and the workmen involved in the above case also agree that the amounts received by the workman is in full and final settlement of all their claims and no issue is outstanding between the parties.
  9. The 1<sup>st</sup> Party hereby submits that the Management of KIOCL Ltd., has paid the amount as per Annexures 2 & 3 and no dues are pending.
  10. In view of the above, the 1<sup>st</sup> Party Union and the individual workmen agree that all the claims raised in this reference are fully settled and no further claims will be made against the II party Company.

11. The Hon'ble Court may be pleased to dispose of the above reference CR No.92/2007 as settled out of Court in terms of the Joint Memo and without costs, in the interest of Justice."
- 2) Further, on 19.09.2016 (today) 2<sup>nd</sup> party has filed the list of documents mentioning the full details and also particulars. The said material records copies have been received by Counsel for the 1<sup>st</sup> Party. No tenable objection has been made on behalf of 1<sup>st</sup> Party to record the said terms of settlement filed by both parties dated 08.08.2016. Accordingly, as per the terms mentioned in the Joint Memo of Settlement dated 08.08.2016 all the claims raised in the present reference are fully settled.
- 3) Today in the Open Court the following persons also present in Person:  
 Sh S. Rajendra (9731244885) – General Manager (HR)  
 Sh Chetan Kumar Shetty (9480501658) – Manager (HR) and  
 Sh Subramanya Bhat (9902581461) – Manager(Law) present on behalf of 2<sup>nd</sup> Party.

Also Sh K P Chandrakeshava (9480016654), Sh H G Rudresh (8762926335) and Sh M B Subhasha (9481213854) workmen present

### AWARD

In the above mentioned facts and circumstances, the present reference is disposed of, as settled out of Court, in terms of the joint Memo dated 08.08.2016. The terms and conditions mentioned in Joint Memo dated 08.08.2016 and also list of document filed on behalf of 2nd Party dated 19.09.2016 are to form part and parcel of today's Award passed by this Tribunal. The said records are bulky in nature and they are kept along with the case bundle.

Reference is disposed of accordingly.

(Dictated, transcribed, corrected and signed by me on 19<sup>th</sup> September, 2016)

V. S. RAVI, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2268.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 1255/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-12012/324/1996-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2268.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1255/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 16.11.2016.

[No. L-12012/324/1996-IR (B-II)]

RAVI KUMAR, Desk Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### Present :

Pramod Kumar Chaturvedi,  
 Presiding Officer, CGIT-cum-Labour Court,  
 Ahmedabad,

Dated 21<sup>st</sup> June, 2016

**Reference: (CGITA) No. 1255/2004**

The Assistant General Manager,  
Bank of Baroda,  
Zonal Office, South Gujarat Zone,  
P.B. No. 2, Dutch Road, Nanpura,  
Surat

...First Party

v/s.

Shri Manilal P. Rathod,  
c/o P.F. Baxi, Advocate,  
Dhariya Mahal, 11/2029, Surat

...Second Party

For the First Party : None

For the Second Party : None

### **AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/324/96-IR(B-II) dated 11.08.1997 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matter specified in the Schedule:

### **SCHEDULE**

“Whether the action of the management of Bank of Baroda in not terminating/discontinuing/refusing giving employment/duties to Shri Manilal P. Rathod is legal and justified? If not, to what relief the said workman is entitled?”

1. The reference dates back to 11.08.1997. Second party submitted the statement of claim Ext. 7 on 28.11.1997 and first party submitted the written statement Ext. 14 on 08.03.1999. Since then the second party did not prefer to lead his evidence. Thus, it appears that the second party is not willing to prosecute the case.

2. Therefore, the case is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2269.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाइटेड बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 1474/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-12011/107/2004-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2269.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1474/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the Industrial Dispute between the management of United Bank of India and their workmen, received by the Central Government on 16.11.2016.

[No. L-12011/107/2004-IR (B-II)]

RAVI KUMAR, Desk Officer

### **ANNEXURE**

### **BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD**

#### **Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,

Dated 17<sup>th</sup> October, 2016

**Reference: (CGITA) No. 1474/2004**

The General Manager,  
United Bank of India, Head Office, 16,  
Old Court House Street, Kolkata – 700001

...First Party

V/s.

The Joint Secretary,  
United Bank of India Sramik Karmachari Samity,  
C/o United Bank of India, Lal Darwaja,  
Ahmedabad (Gujarat) – 380016

...Second Party

For the First Party :

For the Second Party :

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12011/107/2004-IR(B-II) dated 20.10.2004 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the action of the management of United Bank of India in declining the allowance like Travelling Allowance, Halting allowance and Special Leave to serving Bank employees who act as defence witness are justified in view of I.B.A. ‘s guidelines? If not, what relief the employees are entitled to?”

1. The reference dates back to 20.10.2004. The second party submitted the statement of claim Ext. 3 on 20.01.2005 and the first party submitted their vakalatpatra Ext. 5 and written statement Ext. 6 on 03.12.2008 respectively. Since then the second party has been absent and has also not been leading evidence. In the said circumstances, the tribunal issued a fresh notice Ext.7 to the second party for leading evidence on 14.03.2012. Even after a lapse of 4 years, second party has been absent and refrained to lead evidence.
2. Therefore, this tribunal has no option but to close the evidence of the second party and to dispose of the reference against the second party in the absence of his evidence.
3. Thus in the aforesaid circumstances, the tribunal decides that the action of the management of United Bank of India in declining the allowance like Travelling Allowance, Halting allowance and Special Leave to serving Bank employees who act as defence witness are justified in view of I.B.A. ‘s guidelines.
4. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2270.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 706/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-12011/2/2000-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2270.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 706/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 16.11.2016.

[No. L-12011/2/2000-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,

Dated 20<sup>th</sup> June, 2016

**Reference: (CGITA) No. 706/2004**

The Chief Regional Manager,  
Bank of India, Vadodara Region,  
Bank of India Building, ElloraPrk, Subhanpura  
Vadodara (Gujarat) – 390007

...First Party

**V/s.**

The Deputy General Secretary,  
Bank of India Employees Union,  
Bank of India Building, Raopura,  
P.B. No. 132, Baroda (Gujarat)

... Second Party

For the First Party : Shri D.C. Gandhi, Advocate

For the Second Party : None

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12011/2/2000-IR(B-II) dated 16.06.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the demand of the union for absorption/regularisation of 8 Budlee Sepoys i.e. S/Shri (1) Gopalbhai Jashbhai Rana (2) Babubhai Kalidas (3) Jitubhai Shanabhai Veghela (4) Babubhai Bhathibhai Parmar (5) Maganbhai Bhulabhai Makwana (6) Ahmedbhai Rahimbhai Khalifa (7) Masoodmiya M. Malek & (8) Vinodbhai Hathibhai Purabia, as ‘Guard/Sepoy’ in the bank is legal, proper and justified? If so, what relief these 8 Budlee Sepoys are entitled to and from which date and what other directions are necessary in the matter?”

1. The reference dates back to 16.06.2000. Both the parties submitted the Vakalatatpatra Ext. 3 and Ext. 4 of their respective advocates on 19.01.2001 and 17.04.2001. Second party submitted the statement of claim Ext. 11 on 22.08.2003. First party, Bank of India also filed the written statement Ext. 16 on 09.08.2005. But second party, since then, did not prefer to give his evidence. Thus it appears that second party is not willing to prosecute/proceed with the reference.

2. Thus, in the light of the above, the reference is dismissed in non-prosecution of the reference by the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2271.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाईटेड बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 1254/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-12012/08/1996-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2271.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1254/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure in the Industrial Dispute between the management of United Bank of India and their workmen, received by the Central Government on 16.11.2016.

[No. L-12012/08/1996-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,

Dated 21<sup>st</sup> June, 2016**Reference: (CGITA) No. 1254/2004**

The Manager,  
United Bank of India,  
Trade Road, Ring Road,  
Surat – 395002

...First Party

**V/s.**

The Joint Secretary,  
United Bank of India,  
Shramik Karmachari Sangh C/o United Bank of India,  
Manik Chowk, Ahmedabad

...Second Party

For the First Party : None

For the Second Party : None

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/08/96-IR(B-II) dated 04.04.1997 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the action of the management of United Bank of India, Surat in not making the payment of 100% subsistence allowance to Shri N.M. Patel, Cash-cum-General Clerk for the period from 10.07.1984 to 07.03.1995 is justified? If not, to what relief is the said workman entitled?”

1. The reference dates back to 04.04.1997. Second party submitted the statement of claim Ext.3 on 04.08.1997 and the first party submitted the written statement Ext. 10 on 30.12.1997. Since then the second party did not prefer to lead his evidence. Thus, it appears that the second party is not willing to prosecute the case.
2. Therefore, the case is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2272.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 65/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-39025/01/2010-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2272.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 16.11.2016.

[No. L-39025/01/2010-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,

Dated 14<sup>th</sup> July, 2016**Reference: (CGITA) No. 65/2005**

Shri Ashwinbhai Jayantibhai Patel,  
19-A, Jaydip Co-operative Housing Society,  
Near Kabir Ashram, Manjalpur,  
Vadodara – 390001

...Complainant/Applicant

**V/s.**

The Chief Manager/Zonal Manager,  
Bank of India, Zonal Office,  
Bank of India Building, 1<sup>st</sup> Floor,  
Ellora Park, Subhanpura, Vadodara

...Respondent/Opponent

For the Complainant : Shri M.S. Mansuri

For the Opponent : Shri D.C. Gandhi Associates

**ORDER**

1. This is a complaint moved by the complainant under section 33(2)(b) of the Industrial Disputes Act, praying to quash and set aside the order dated 16.09.2003 regarding the dismissal of the complainant by the opposite party and also to declare the aforesaid order as invalid, inoperative and void ab initio and also to direct the opposite party to treat the complaint in a continuous service. Opposite party submitted the written statement / reply Ext. 8 on 06.03.2006/13.04.2006. Both the parties also submitted the number of documents.

2. The case was instituted on 21.03.2005 and written statement was filed on 13.04.2006 but since then complainant has been absent and has also not been leading evidence despite even giving opportunities to lead his evidence even in his absence on the earlier dates. Thus, it appears that the complainant has not been intending to prosecute the case.

3. Thus, the case is dismissed in non-prosecution of the case by the complainant.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2273.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन मैरीटाइम यूनिवर्सिटी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 78/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-33025/01/2015-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2273.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 78/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Indian Maritime University, East Coast Road and their workmen, received by the Central Government on 16.11.2016.

[No. L-33025/01/2015-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI**Tuesday, the 28<sup>th</sup> June, 2016**Present :** K.P. PRASANNA KUMARI, Presiding Officer**Industrial Dispute No. 78/2015**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Maritime University and their workman)

**BETWEEN :**

The General Secretary : 1<sup>st</sup> Party/Petitioner Union  
National Maritime Academy Employees Union  
Regn.No. 2129/1991-92, East Coast Road  
Uthandi  
Chennai-600119

**AND**

1. The Vice Chancellor : 2<sup>nd</sup> Party/1<sup>st</sup> Respondent  
Indian Maritime University, East Coast Road  
Uthandi  
Chennai-600119
2. The Registrar : 2<sup>nd</sup> Party/2<sup>nd</sup> Respondent  
Indian Maritime University, East Coast Road  
Uthandi  
Chennai-600119

**Appearance:**

For the 1<sup>st</sup> Party/Petitioner Union : M/s. Row & Reddy, Advocates  
For the 2<sup>nd</sup> Party/1<sup>st</sup> & 2<sup>nd</sup> Respondent : M/s. M. R. Raghavan, Advocate

**AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-39025/01/2015-IR (B-II) dated 18.05.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

*“Whether the action of the management of Indian Maritime University, Chennai regarding stopping of deduction of Union Subscription from the salary of employee is justified or not? If not so, to what relief the Union is entitled to?”*

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 78/2015 and issued notice to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.
3. The Petitioner has filed Proof Affidavit in lieu of Chief Examination on 15.03.2016. Thereafter the matter has been repeatedly posted for appearance of the witness for his examination. However, he never presented himself before this Court. His continuous absence alongwith the absence of his counsel would show the petitioner is not interested in

prosecuting the matter. In the absence of any material in favour of the petitioner this tribunal could not consider the case on merits. The petitioner is not entitled to any relief.

The reference is answered against the petitioner. An award is passed accordingly.

(Dictated to the PA transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28<sup>th</sup> June, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined:**

For the 1<sup>st</sup> Party/Petitioner Union : None

For the 2<sup>nd</sup> Party/1<sup>st</sup> and 2<sup>nd</sup> Management : None

**Documents Marked :**

**On the petitioner's & Managements's side**

Ex.No.	Date	Description
	Nil	

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2274.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केसर टर्मिनल एंड इन्फ्रास्ट्रक्चर लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 72/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-12012/38/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2274.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 72/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure in the Industrial Dispute between the management of Kesar Terminals and Infrastructure Ltd. and their workmen, received by the Central Government on 16.11.2016.

[No. L-12012/38/2014-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD**

**Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,

Dated 23<sup>rd</sup> June, 2016

**Reference: (CGITA) No. 72/2014**

The General Manager,  
Operation, Kesar Terminals & Infrastructure Ltd.,  
Terminal No. 1, Near Oil Jetty, Old Kandla,  
Kutch(Gujarat) – 370210

...First Party

v/s.

Shri D. Nomeswar Rao,  
B-86, Khatri Colony, Maheshwari Society,  
New Kandla,  
Kandla(Kutch)

....Second Party

For the First Party : None  
For the Second Party : Mr. Ishwar Saran

#### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/38/2014-IR(B-II) dated 23.07.2014 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matter specified in the Schedule:

#### SCHEDULE

“Whether the action of the management of M/s. Kesar Terminals & Infrastructure Ltd., Old Kandla in terminating the services of Shri D.N. Rao forcefully and without giving an opportunity of being heard is justified?What relief the workman, Shri D.N. Rao is entitled to?”

The reference dates back to 23.07.2014. The second party’s workman Danyya Nomeswar Rao has moved an application Ext. 4 for withdrawal of the Industrial Dispute stating that matter has been amicably settled between the parties without any pressure or compulsion.

Thus, the application Ext. 4 is allowed and the reference is dismissed as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2275.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 34/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-12012/54/2012-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2275.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure in the Industrial Dispute between the management of Bank of Baroda, Baroda Region and their workmen, received by the Central Government on 16.11.2016.

[No. L-12012/54/2012-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,

Dated 26<sup>th</sup> July, 2016

**Reference: (CGITA) No. 34/2013**

1. The Deputy General Manager,  
Bank of Baroda, Baroda Region, Suraj Plaza – III, 5<sup>th</sup> Floor,  
Sayajiganj, Baroda – 390005.
2. The Deputy General Manager,  
Bank of Baroda, Gujarat Operations, Vigilance Deptt.,  
Zonal Office, Bank of Baroda Towers, Opp. Law Garden, Ellisbridge,  
Ahemdabad – 380006.
3. The Managing Director,  
Bank of Baroda, Baroda Corporate Centre,  
Bandra Kurla Complex, Mumbai

...First Party

V/s

Shri M.N. Patel,  
B/39, Madina Park Society,  
Nr. Madhuram Society, Tandelja Road,  
Baroda

...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party : None

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/54/2012-IR (B-II) dated 08.02.2013 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the action of the management of Bank of Baroda, Baroda through its officers by imposing the capital punishment of ‘Removal from Bank’s Service vide order dated 05.05.2009 upon Shri M.N. Shaikh, Ex-Subordinate Staff is legal and justified? What relief the concerned workman Shri M.N. Shaikh is entitled to?”

1. The reference dates back to 08.02.2013. Both the parties were served by registered post on 09.02.2015. First party submitted the vakalatpatra Ext. 7 of his advocate K.V. Gadhia Associates on 23.02.2015. Since then second party has been absent and has not preferred to submit the statement of claim. Thus, it appears that the second party are not willing to prosecute the case.
2. Thus, the reference is dismissed in non-prosecution of the case by the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2276.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 84/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-12012/28/2015-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2276.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 84/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Indian Overseas Bank, IR Department and their workmen, received by the Central Government on 16.11.2016.

[No. L-12012/28/2015-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI**

Friday, the 29<sup>th</sup> June, 2016**Present : K.P. PRASANNA KUMARI, Presiding Officer****Industrial Dispute No. 84/2015**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Overseas Bank and their workman)

**BETWEEN :**

Smt. G. Anbukili : 1<sup>st</sup> Party/Petitioner

**AND**

The Chief Manager : 2<sup>nd</sup> Party/Respondent  
 Indian Overseas Bank, IR Department  
 P.B. No. 3765, 763 Anna Salai  
 Chennai-600002

**Appearance:**

For the 1<sup>st</sup> Party/Petitioner : M/s Revathi Ganesh, Advocates  
 For the 2<sup>nd</sup> Party/Respondent : M/s T.S. Gopalan & Co., Advocates

**AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/28/2015-IR (B-II) dated 22.05.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

*“Whether the dismissal of Smt. G. Anbukili, by the Management of Indian Overseas Bank is justified or not? If not so, to what relief the workman is entitled to?”*

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 84/2015 and issued notice to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.
3. The averments in the Claim Statement in brief are these:

The husband of the petitioner has been working as Head Clerk in the Respondent Bank. After his death during service, the petitioner was given appointment as a Messenger in the Bank on compassionate grounds. She was posted at Pon Pudupatti Branch on 08.01.1994. She had been working in the same branch for 19 years. On 22.03.2013 a Charge Memo was served on her alleging that she had submitted bogus certificate regarding her educational qualification and that she has violated Clauses-5j and 5m of the Memorandum of Settlement. The father and brother of the petitioner had gone to the school and collected her school certificate. She had no intention to do anything against the rules and regulations of the Bank. In spite of explanation given by the petitioner to the Charge Memo, an enquiry was ordered. The petitioner has participated in the enquiry held thereafter. The petitioner had requested the Respondent to examine the authenticity of the certificate submitted by her. Without heeding to this, the Enquiry Officer found that the charge against the petitioner is proved. Based on the enquiry report the petitioner was dismissed from service by order dated 28.04.2014. The Respondent had not followed the principles of natural justice right from the issue of the Charge Memo to the dismissal of the petitioner. The petitioner is entitled to be reinstated in service. An order may be passed directing the Respondent to reinstate the petitioner in service with backwages and other attendant benefits.

4. The Respondent has filed Counter Statement contending as below:

The petitioner was appointed as Messenger on compassionate grounds on the death of her husband who was an employee of the Bank. In the application for employment the petitioner has declared that if the particulars given by her in the form are found to be incorrect she shall be liable to be disqualified and in case of appointment the Appointment Order is liable to be cancelled. In her application for appointment she had claimed that she has passed 8<sup>th</sup> standard. She submitted record sheet purported to have been signed by the Headmaster of Panchayat Union Higher Elementary School, Poolankurichi. In June 2012 a complaint was received from Central Bureau of Investigation in which it was stated that the petitioner has studied only upto 2<sup>nd</sup> standard and that she has obtained a bogus certificate showing that she has studied upto 8<sup>th</sup> standard. On verification from the school from which record sheet was purported to have been issued it was found that the petitioner had not studied in the school for the period mentioned in the certificate. A charge sheet was issued to the petitioner for producing bogus educational certificate and she was asked to show cause why disciplinary action should not be taken against her. Her explanation was not satisfactory and an enquiry was conducted. The Enquiry Officer gave his report holding that the charges against the petitioner are proved. After

personal hearing the Disciplinary Authority passed an order dismissing her from service on 28.04.2014. The petitioner had not stated that she studied in the concerned school during the relevant period. So the fact that the certificate produced by her was not genuine is not in dispute. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and documents marked as Ext.M1 to Ext.M29.

6. The points for consideration are:

(i) Whether there is any justification in the dismissal of the petitioner from service by the Respondent?

(ii) What, if any, is the relief to which the petitioner is entitled?

### **The Points**

7. The petitioner was appointed in the Respondent Bank as Messenger in 1994 on compassionate grounds consequent to the death of her husband who was an employee in the Clerical Cadre of the Bank. She was working at Pon Pudupatti Branch until she was dismissed from service by the Bank by order dated 28.04.2014. The Bank had issued a Charge Memo dated 22.03.2013 on her alleging that she has submitted bogus certificate regarding her educational qualification to get appointment in the Bank. An enquiry was conducted, and her dismissal from service was consequent to the report of the enquiry. The dispute is raised challenging the dismissal of the petitioner from service.

8. Ext.M18 is Charge Sheet dated 22.03.2013 issued to the petitioner. In this it is stated that in the application form for getting employment she has stated that she had passed 8<sup>th</sup> standard in the year 1985 and had submitted a record sheet purportedly issued on 31.05.1976 with Admission No. 336 in support of her educational qualification, that she was given appointment based on this certificate and her assertion of her qualification, that on verification of the certificate it was found that it is not genuine and she has gained employment in the Bank by producing bogus certificate. Thus she has alleged to have done acts prejudicial to the interests of the Bank and knowingly made false statement in the document in connection with her employment in the Bank. The Charge Sheet stated that she has committed offences under Clause-5(j) and 5(m) of the Memorandum of Settlement dated 10.04.2002.

9. Ext.M19 is the reply given by the petitioner to Ext.M18-Charge Sheet. She has stated in the explanation that the record sheet given by her is genuine. Not satisfied with the explanation, an enquiry was conducted by the Bank. During the enquiry she has denied the charges made against her. The Management had marked documents including a letter obtained from the then Head Master of Poolankurichi Elementary School, Karaikudi with her consent. Before the Enquiry Officer what she has stated regarding the Record Sheet is that consequent to the death of her husband she was in mourning and her father and brother had gone to the school where she had studied and obtained the certificate and submitted the same to the Bank. Ext.M17 is the letter from the Headmaster of the concerned school. The record sheet submitted by the petitioner seems to have been sent to the school for verification. It was in reply to this Ext.M17 has been sent by the Headmaster. In the Record Sheet submitted by the petitioner for getting appointment and marked as Ext.M12 the Admission Number of the petitioner is shown as 336. In Ext.M17 the Headmaster has informed that no one with the name Anbukili with Admission No. 336 had studied in the school during the period from 10.06.1968 to 01.06.1975.

10. No doubt the Respondent Bank had not examined the concerned Headmaster in the enquiry proceedings to prove that the petitioner had not studied in the school and that the certificate produced by her is a bogus one. However, there is the fact that the petitioner had never specifically stated in the enquiry proceedings that the certificate is a genuine one and that she was a student at the school. On the other hand she was trying to excuse herself from the responsibility regarding the Record Sheet stating that she had nothing to do with it but her father and brother had gone and fetched the document from the school. Once the Management had marked the letter from the school Headmaster without any objection it was upon the petitioner to give some rebuttal evidence regarding the genuineness if any of the Record Sheet produced by her. However, she has merely stated in the enquiry proceedings as well as before the Disciplinary Authority that she is the breadwinner of the family and she would be in difficulty if she is sent out of service. No attempt was made on her part to get the certificate from the school.

11. Before this Tribunal also, though petitioner had the opportunity, she did not make any attempt to show that the document produced by her is genuine. On the other hand in the Claim Statement itself she has repeated that her father and brother had gone to school and collected the certificate from the school authorities. If the petitioner had actually studied in the concerned school upto 8<sup>th</sup> standard it would have been easy for her to establish it. The allegation made against the petitioner being that she has obtained job by producing bogus certificate is a very severe one and the petitioner could have taken steps to produce the real certificate if any was available. On the other hand, she has closed her evidence merely detailing her difficulties because of her non-employment. Even during her examination what she has stated is that the certificate was obtained by her father and brother. She has not stated even in the affidavit that she has studied in the concerned school during the relevant period and that the certificate is a genuine one. On the other hand her affidavit is only an attempt of evasion. No doubt, the Respondent has the burden to establish that the

certificate is not genuine. This burden was sufficiently discharged by marking the documents in the enquiry proceedings. Alongwith is the version of the petitioner justifying the case of the Management. There is no reason to find fault with the report of the enquiry. Having obtained job using a bogus document dismissal was the natural consequence. Any lesser punishment is out of question in the circumstances also. the petitioner is not entitled to any relief.

In the result the reference is answered against the petitioner. An award is passed accordingly.

(Dictated to the PA transcribed and typed by him, corrected and pronounced by me in the open court on this day the 29<sup>th</sup> June, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined:**

For the 1<sup>st</sup> Party/Petitioner : WW1, Smt. G. Anbukili  
For the 2<sup>nd</sup> Party/Management : None

**Documents Marked :**

**On the petitioner's side**

Ex.No.	Date	Description
	Nil	

**On the Management's side**

Ex.No.	Date	Description
Ext.M1	10.04.2002	Memorandum of Settlement
Ext.M2	09.04.2013	Notice of Enquiry issued to the Petitioner by the Respondent (IC/IR/213/1222/25555013-14) – fixing enquiry on 23.04.2013
Ext.M3	01.06.2013	Notice of Enquiry – fixing enquiry on 13.06.2013
Ext.M4	22.07.2013	Hearing held on 13.06.2013 – Enquiry to be held on 28.06.2013 postponed at Petitioner's request – fixing enquiry on 03.08.2013
Ext.M5	-	Letter of Petitioner – acknowledging the notice of 22.07.2013 – Union Representative could not come on 3/8 – praying time to adjourn the enquiry
Ext.M6	29.07.2013	Enquiry to be held on 03.08.2013 adjourned at Petitioner's request – Notice posting enquiry on 12.08.2013
Ext.M7	07.08.2013	Letter from Petitioner – AIOBE Union not cooperating – to seek assistance of some other prayed time e.g. 12.08.2013 hearing
Ext.M8	19.08.2013	Notice of Enquiry's posting enquiry on 30.08.2013
Ext.M9	13.06.2013 30.08.2013	Proceedings of Enquiry
Ext.M10	13.04.1994	Application from submitted by the Petitioner for Employment
Ext.M11	-	Undated Record Sheet issued by Head Master, Poolankurichi
Ext.M12	31.05.1976	Certificate issued by H.M – Higher Primary School, Poolankurichi – with regard to attendance, progress and conduct
Ext.M13	13.04.1994	Petitioner's declaration that she had passed 8 <sup>th</sup> standard
Ext.M14	13.04.1994	Memo No. 073 by Pudupatti Branch addressed to P.A.D. forwarding CSE's Service Sheet, application form, photocopy of educational qualification, etc.
Ext.M15	08.01.1994	Appointment Order issued to the Petitioner by R.O. Karaikudi
Ext.M16	08.02.2013	Letter from R.O. Karaikudi to Chief Manager, I.R.D., Chennai forwarding MEX-7 to Central Office on complaint by Mr. V. Dharmalingam
Ext.M17	11.01.2013	Letter from H.M. Poolankurichi Higher Primary School to B.M., R.O., Karaikudi
Ext.M18	22.03.2013	Charge Sheet in English issued to the petitioner and its Tamil version furnished to the petitioner

And  
18A

Ext.M19	06.04.2013	Petitioner's reply to the Charge Sheet dated 22.03.2013
Ext.M20	22.01.2014	Report of the Enquiry Officer and its Tamil version
And 20A		
Ext.M21	23.01.2014	Letter from Respondent forwarding E.O.'s Report calling for her representation on the findings of the E.O,
Ext.M22	05.03.2014	Letter from IOB Pudupatti Branch to D.A. enclosing letter of the petitioner dated nil on the findings of the Enquiry Officer and enclosing letter of the petitioner dated 22.02.2014
Ext.M23	10.03.2014	Second Show Cause Notice issued by the Respondent proposing punishment of dismissal and informing personal hearing upon request and with Tamil version of the Show Cause Notice
Ext.M24	24.03.2014	Letter from Respondent to the Petitioner advising to give her reply the show cause notice within a week and Tamil version of the letter
Ext.M25	25.03.2014	Letter from the Petitioner to the E.O. requesting to give her a personal hearing
Ext.M26	27.03.2014	Notice of personal hearing – posting personal hearing on 07.04.2014
Ext.M27	-	Proceedings of personal hearing before the D.A.
Ext.M28	28.04.2014	Dismissal order issued to the petitioner
Ext.M29	June/2014 Oct./2015	Statement of Account of G. Anbukili.

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2277.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चैन्नई पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 43/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-33011/01/2015-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2277.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Chennai Port Trust, Rajaji Salai and their workmen, received by the Central Government on 16.11.2016.

[No. L-330011/01/2015-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 4<sup>th</sup> July, 2016

**Present :** K.P. PRASANNA KUMARI, Presiding Officer

#### Industrial Dispute No. 43/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Chennai Port Trust and their workman)

**BETWEEN :**

The General Secretary : 1<sup>st</sup> Party/Petitioner Union  
 The Madras Port & Dock Employees Union  
 New No. 55, Old No. 26, Moore Street (1<sup>st</sup> Floor)  
 Mannady  
 Chennai-600001

**AND**

The Chairman : 2<sup>nd</sup> Party/Respondent  
 Chennai Port Trust  
 Rajaji Salai  
 Chennai-600001

**Appearance :**

For the 1<sup>st</sup> Party/Petitioner Union : M/s K.C. Karl Marx, Advocate  
 For the 2<sup>nd</sup> Party/Respondent : Sri P. Srinivasan, Advocate

**AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-33011/01/2015-IR (B.II) dated 20.03.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

*“Whether the action of the management of Chennai Port Trust regarding stopping of fixed OT, relieving OT for the employees of Marine Department is justifiable or not? If not, to what relief the workman are entitled?”*

2. On receipt of the notice, this Tribunal has numbered it as ID 43/2013 and issued notices to both sides. Both sides have entered appearance through their counsel and filed their Claim and Counter Statement respectively.
3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a recognized Trade Union espousing the cause of the workers and employees working under the Respondent. A Special Allowance has been paid for Marine Crew from 01.11.1978 to 13.11.1992. This was subsequently replaced by 1 hour fixed OT at Single Hourly Rate as recommended by the Mishra Committee during the year 1992. Thus from 01.07.1992, one hour fixed overtime at single hourly rate was paid to the Marine Workers of Pilotage Section, Mooring Section, Signal Station and Yard and Service Station. In case of Pilotage and Mooring Section crew who are working in 8 hours shift, if and when they are detained beyond the scheduled duty hours they will be paid normal overtime in addition to the one hour fixed overtime at single Hourly Rate as referred to earlier. Now the Respondent has issued notice under Section-19(2) of the ID Act to terminate the settlement to MPT Railways Men Union as it is party to the settlement. The Petitioner Union being the second largest union and having sizeable members from the Marine Department ought to have been considered before issuing such notice. There is no justification for the Respondent in stopping the fixed OT paid at the single rate in lieu of Special Allowance. An award may be passed directing the Respondent to pay the fixed OT as recommended by the Mishra Committee.

4. The Respondent has filed Counter Statement contending as below:

Overtime Allowance has to be paid to the employees for work done in excess of the prescribed hours of work on any working day and it includes work done on Sundays or any other holidays. In determining whether the employee has worked OT, only those hours he actually worked will be considered. In compliance with the orders of National Green Tribunal, Madras handling of dusty cargos like Coal and Iron Ore were banned in Chennai Port. The Chennai Port Trust is facing financial crisis on account of this and incurred huge revenue loss. The expert committee appointed by the Ministry to improve the Port had suggested that overtime granted to the employees shall be stopped. The NIT Award says that the system of grant of relieving overtime is an unfair labour practice. The petitioner is also a party to the decision arrived at in NIT. A decision was taken in the Board Meeting for curtailing the enormous overtime granted to the employees to curb the wasteful expenditure. Accordingly, a notification has been issued on 20.03.2013 under Section-19(2) of the ID Act stating that no fixed overtime or relieving overtime or any other overtime shall be paid without actually performing the work beyond the stipulated time. The settlement overtime has been stopped from July, 2014. However, need based overtime is being paid to the employees. Consequent to the settlement reached between the Madras Port Trust Railway Mens Union under Section-18(1) of the ID Act, 1 hour overtime at Single Hourly Rate in

lieu of payment of Special Allowance has been paid w.e.f. 01.07.1992. This one hour single hourly OT has been increased to double Hourly OT w.e.f. 01.04.1994 to avoid delay in shipping movements and to improve productivity, by order dated 13.06.1994. The other major Ports have not been giving any fixed overtime allowance. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and WW2 and documents marked as Ext.W1 to Ext.W5.

6. **The points for consideration are:**

- (i) Whether the action of the Respondent in stopping fixed overtime and relieving overtime for the employees of Marine Department is justified?
- (ii) What, if any is the relief to which the workmen are entitled?

### **The Points**

7. The claim of the Petition seeks to direct Respondent Management to pay fixed overtime allowance to the workmen as recommended by the Mishra Committee. In the schedule of reference there is reference to stopping of the fixed overtime allowance as well as relieving overtime allowance that was paid to the workmen. However, in the claim statement the petitioner's prayer is only to direct the Respondent to pay the fixed overtime allowance as recommended by the Mishra Committee. So it is to be presumed that the petitioner has given up the claim, if any, regarding relieving overtime allowance that has been paid to the workmen.

8. The General Secretary of the Union through whom the dispute is raised has given evidence regarding the relief sought. In the affidavit filed by this witness also the claim is only regarding fixed overtime. He has stated under what circumstances this has become payable to the workmen. The relevant documents are also marked through this witness.

9. Ext.W3-the agreement entered into between the Madras Port Trust Railway Men Union and the Respondent reveals under what circumstances fixed overtime became payable to the workmen. The agreement refers to the report of Mishra Committee appointed by the Government to examine the demands of the Marine Crew. The agreement states that the same is executed on the basis of the report of the Mishra Committee. As per Clause-3 of the Agreement the monthly Special Allowance that was paid to the Marine workers of Pilotage Section, Mooring Section, Signal Station and the Yard of the Marine Department will be withdrawn w.e.f. 01.07.1992. Clause-4 of the agreement states that consequent to the withdrawal of payment of monthly allowance referred to in Clause-3, one hour fixed overtime at single hourly rate would be paid w.e.f. 01.7.1992 onwards to each of the aforesaid categories of workers and also to the workers of the service Station of the Marine Department subject to certain conditions. One of the conditions is that all the conditions / reasons for which the monthly Special Allowance was initially granted will continue to apply for payment of this one hour fixed overtime. Clause-5 of the agreement states that in the case of Pilotage and Mooring Sections Crew who are working in 8 hour shifts if and when they are detained for overtime work beyond the scheduled duty hours, they would be paid normal overtime in addition to the one hour fixed overtime at single hourly rate referred to in Clause-4 of the agreement. Thus it could be seen from the relevant clauses in Ext.W3 that 1 hour fixed overtime at single hourly rate was one that was substituted for the Special Allowance that was earlier payable. It was not payment made for overtime work done. On the other hand the payment was meant as an allowance for those who have worked for the normal 8 hours. The Sub-Clause (b) of Clause-4 would show that though the nomenclature for the payment was changed to overtime payment, in effect it was only an allowance and the conditions for which the Special Allowance was initially granted were to continue to apply for payment of the one hour fixed overtime also. So the contention of the Respondent that it is overtime payment cannot be accepted. It is only a Special Allowance though it is given the name single overtime allowance in Ext.W3. The Respondent should not have stopped the allowance under the assumption that it is an overtime allowance which is paid for work which is not done. The payment seems to have been made on the basis that when they work for 8 hours they are entitled to one hour's wage whether it is named allowance or overtime payment.

10. The Apex Court has held in the decision in the Life Insurance Corporation of India Vs. D.J. Bahadur & Others reported in 1981 1 LLJ 1 that even after issue of notice under Section-19(2) of the ID Act terminating the settlement, until altered, the contract continues to govern the relations between the parties in respect of the terms and conditions of service. So in any case the settlement is to prevail until it is replaced by another.

11. On the basis of the above discussion, the Respondent is directed to continue to pay the one hour fixed overtime at single rate to the members of the Petitioner Union. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 4<sup>th</sup> July, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined:**

For the 1<sup>st</sup> Party/Petitioner Union : WW1, Sri A. Krishnamoorthy  
 WW2, Sri T. Narendra Rao

For the 2<sup>nd</sup> Party/Management : None

**Documents Marked :****On the petitioner's side**

Ex.No.	Date	Description
Ext.W1	-	Recommendations of the Misra Committee
Ext.W2	-	Recommendations of the Kishore Committee
Ext.W3	21.10.1992	Agreement entered between a Trade Union and the Respondent
Ext.W4	08.03.2001	Agreement entered between a Trade Union and the Respondent
Ext.W5	19.03.2001	Agreement entered between a Trade Union and the Respondent

**On the Respondent's side**

Ex.No.	Date	Description
	Nil	

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2278.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विजया बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोचीन के पंचाट (संदर्भ सं. 12/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-12012/223/1994-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2278.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Cochin as shown in the Annexure in the Industrial Dispute between the management of Vijaya Bank and their workmen, received by the Central Government on 16.11.2016.

[No. L-12012/223/1994-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
 ERNAKULAM**

**Present:** Shri K. Sasidharan, B.Sc., LLB, Presiding Officer

(Monday the 11<sup>th</sup> day of July, 2016/20<sup>th</sup> Ashadha, 1938)

**ID 12/2010**

**(Formerly ID No.21/1994 of Industrial Tribunal, Kollam)**

Union : The Joint Secretary,  
 Vijaya Bank Workers' Organisation,  
 283, PVC ROFTS Road,  
 Triplicane,  
 Madras – 5.

By M/s. H. B. Shenoy Associates

Management : The General Manager(P&S),  
Personnel Department,  
Vijaya Bank,  
Head Office,  
41/2, M.G. Road,  
Bangalore – 560001.

By Adv. Shri. R. S. Kalkura

This case coming up for final hearing on 27.06.2016 and this Tribunal-cum-Labour Court on 11.07.2016 passed the following:

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and of Section 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947) the Central Government referred the following dispute before this Tribunal for adjudication.

2. The dispute is:

**“Whether the action of the management of Vijaya Bank, Bangalore in imposing the punishment of stoppage of three increments permanently on Shri T. S. Asok Kumar, Clerk is legal and justified? If not, what relief is the said workman entitled to?”**

3. As per the Central Government Order No.L.12012/223/94-IR(B-II) dated 15.11.1994 the dispute was originally referred for adjudication before the Industrial Tribunal, Kollam, from where the matter was numbered as ID 21/1994. The Industrial Tribunal, Kollam passed an Award in ID 21/1994 on 28.11.1996. Against that award the union preferred OP No.15480/1997 P before the Hon'ble High Court of Kerala. As per the judgment in OP No.15480/1997 P dated 26.07.2005, the Hon'ble High Court of Kerala set aside the award dated 28.11.1996 passed in ID 21/1994 by the Industrial Tribunal, Kollam and remanded the matter to pass an award afresh in accordance with law. Subsequently as per the order in CMP 59/2009 dated 10.11.2009 passed by the Industrial Tribunal, Kollam, the matter was transferred to this Tribunal for adjudication. The matter was received before this Tribunal and it was numbered as ID 12/2010. Thereafter the parties entered appearance before this Tribunal and after hearing both sides this Tribunal passed a Preliminary Order dated 16.06.2010 whereby it was held that the domestic enquiry conducted by the management was invalid. Against that order the management preferred OP(LC) No.1559/2011(O) before the Hon'ble High Court of Kerala. As per the judgment dated 29.04.2011 the Hon'ble High Court of Kerala dismissed the OP(LC) No.1559/2011(O). Against that judgment the management preferred Writ Appeal No.638/2011 before the Hon'ble High Court of Kerala. As per the judgment dated 13.01.2015 the Hon'ble High Court of Kerala dismissed the Writ Appeal. During the pendency of the Writ Petition and Writ Appeal the matter was stayed by the Hon'ble High Court of Kerala. After the disposal of the Writ Appeal the parties entered appearance through counsel before this Tribunal.

4. The contentions in the claim statement filed by the union in brief are as follows:-

The workman Shri T. S. Asok Kumar is a member of the union. The management is the employer. While the workman was holding the post of clerk in the Thiruvalla branch of the bank, the Assistant General Manager of the management bank placed him under suspension as per order No.MDZ:IRS:11341/90 dated 01.09.1990 pending initiation of disciplinary proceedings. Subsequently as per memo dated 02.02.1991 charges were framed against him and he was required to submit explanation. Thereafter the workman requested the management to afford an opportunity to peruse some records relied on by them in support of the charges levelled against him. The management ordered domestic enquiry without affording opportunity to the workman to peruse the records relied on by them. After completing the domestic enquiry the management imposed the punishment - 'stoppage of three increments permanently which will have the effect of postponing his future increments', as per order No.MDZ/IRS/16248/91 dated 26.12.1991. Against that order the workman preferred an appeal before the appellate authority (Deputy General Manager) and it was dismissed as per order dated 06.04.1992.

5. The punishment imposed by the management is illegal, unjustified, unfair and unsustainable for the following reasons among other things:

(i) The management failed to furnish copy of the enquiry report to the workman and failed to afford an opportunity to submit his comments before the acceptance of the findings recorded in the report; that the enquiry report was furnished to the workman only after the management accepted the findings and ordered the proposed punishment as per memo dated 25.11.1991; that the procedure adopted by the management caused prejudice to the workman for the reason that the management accepted the findings before considering the

comments of the workman on the enquiry report and hence such a procedure adopted by the management is illegal.

(ii) During the period of suspension and after completing one year from the date of suspension the management failed to pay full salary and allowances to the workman which is in clear violation of Clause 5(3) of the Bipartite Settlement; that the management took more than five months from the date of suspension, for issuing charge sheet to the workman. The delay in issuing charge sheet and ordering enquiry without providing opportunity to the workman to peruse the relevant records are in gross violation of natural justice and hence caused serious prejudice to the workman.

(iii) That the management failed to release the increment due to the workman which fell due during the period of suspension, which is in violation of the provisions in Shastry Award; that the stoppage of increment is by itself a penalty, which can be imposed only after following the required procedure and the principles of natural justice; that the decision of the management to treat the entire period of suspension not on duty is illegal; that such a decision by the management is in violation of Para 85 of the Shastry Award and Clause 5(3) of the Bipartite Settlement of the year 1983 and caused prejudice to the workman.

(iv) That the management violated the principles of natural justice and their action is in clear violation of the provisions in the Bipartite Settlement; that copy of the documents marked on behalf of the management in the enquiry were not provided to the workman.

(v) That Exts.M6 and M8 marked in the domestic enquiry will prove that proper evidence was not collected; that the management has alleged that the workman defrauded Bank of Baroda but Bank of Baroda has no complaint against the workman; that the Bank of Baroda, Thiruvalla branch and the de facto complainant Shri G. Radhakrishnan were not appeared before the investigating officials to substantiate the allegations. They appeared before the enquiry officer instead of reporting before the investigating officials. The conduct of those persons is questionable.

(vi) That the management did not allow the workman to defend his case properly; that the management relied on the evidence of the Branch Manager to arrive at a conclusion that the workman forged the signature of Shri. G. Radhakrishnan; that the management failed to produce expert evidence to substantiate the case of forgery alleged to have been committed by the workman.

(vii) The enquiry officer has recorded that “the allegation against the charge sheeted employee that he had attempted to defraud Bank of Baroda, Thiruvalla Branch in connivance with Shri. D. G. Nair and Shri Anil Kumar, P, Clerk is not maintainable”. In spite of such an observation, the enquiry officer entered into a finding that the charge against the workman is partly proved which constituted gross misconduct as provided under Sub-clause (J) of Clause 19.5 of Chapter XIX of Bipartite Settlement, 1966; that the finding recorded by the enquiry officer is contradictory and hence unsustainable.

(viii) That the disciplinary authority of the management has not properly applied his mind before issuing the notice of proposed punishment; that the disciplinary authority has not considered the contentions of the workman in an objective manner as stated in his representation dated 21.12.1991; that the management failed to comply the mandatory requirements in the awards and Settlements before issuing the notice with proposed punishment and issuing punishment order against the workman.

(ix) That the disciplinary authority failed to consider the submissions made by the workman before passing the proposed punishment; that the action of the disciplinary authority is clear violation of Paragraph 19.12 of the Bipartite Settlement; that the action of the disciplinary authority caused prejudice to the workman.

(x) That the appellate authority also failed to consider the specific points urged by the workman in the memorandum of appeal; that the observations of the appellate authority is illegal, unjust and unfounded.

(xi) That at any rate the quantum of punishment imposed by the management is shockingly disproportionate in relation to the nature of charges alleged against the workman and it caused serious prejudice and financial loss to him.

(xii) That after revoking the order of suspension the management posted the workman at Koothuparamba in Calicut division though clear vacancies were available in the Thiruvannathapuram division; that the action of the management is clear victimization and in violation of the administrative rules and transfer policy applicable to the clerical staff.

6. Therefore the union has requested to pass an award holding that the punishment imposed by the management is arbitrary and unjust and to cancel the punishment and allow him all consequential benefits thereof.

7. The contentions in the reply statement submitted by the management in brief are as follows:-

The management has denied all the averments in the claim statement submitted by the union except those that are specifically admitted. The union has suppressed material facts and suggested falsehood in filing the claim statement. The management conducted domestic enquiry in relation to the charges levelled against the workman after affording sufficient opportunity to him and by following the provisions in the Bipartite Settlement, and adhering to the principles of natural justice, equity and good conscience. While working as a clerk at Thiruvalla branch of the management bank it was reported that the workman along with two other clerks at the same branch attempted to defraud the Bank of Baroda, Thiruvalla branch to a tune of ₹1,30,000/- by presenting in clearing on 01.06.1990, a cheque bearing No.482240 by making use of a cheque issued by Bank of Baroda, Thiruvalla branch to one of their customers by forging the signature. The cheque was returned unpaid on the same day by Bank of Baroda, Thiruvalla branch with reasons "Reported Lost and signature forged". Therefore as per order dated 01.09.1990 the disciplinary authority of the management bank placed the workman under suspension. The management conducted a detailed investigation which revealed the following facts:-

- (a) That one Anil Kumar P, employed as clerk while discharging his duties as a clerk at the clearing counter of the Thiruvalla branch of the bank on 15.06.1989 came into possession of a blank cheque leaf bearing No.484240 of Bank of Baroda, Thiruvalla branch issued by them to one of their customers viz. Shri G. Radhakrishnan, holder of Savings Bank account No.3455 with them. Shri G. Radhakrishnan had visited the Thiruvalla branch of the management bank for depositing a cheque. Instead of returning the blank cheque to Shri Radhakrishnan or handing over the same to the officer/Branch Manager of Thiruvalla branch, the aforesaid Shri Anil Kumar unauthorisedly and illegally retained the same and passed it on to Shri T. S. Asok Kumar, another clerk of the same branch.
- (b) Later Shri Asok Kumar, a clerk of the management bank filled the above cheque leaf for ₹1,30,000/- and dated the same as 01.06.1990 besides writing the name of Shri Anil Kumar .P as payee and also forging the signature.
- (c) Thereafter Shri T. S. Asok Kumar sent the cheque to Shri Anil Kumar through Shri John Varghese, JND Collector for preparing the pay-in-slip for crediting the proceeds of the same to S. B. account No.969, maintained by Shri Anil Kumar at the Thiruvalla branch of the management bank.
- (d) That the aforesaid forged cheque was later sent by Shri Anil Kumar to the clearing section through the aforesaid JND Collector – Shri John Varghese.

8. The investigations revealed that the workman in this reference had done the above mentioned act in connivance with two other clerks and allowed the cheque to pass on to the hands of Shri Anil Kumar through JND Collector – John Varghese. The said act on the part of the workman involved in this reference amounts to gross misconduct in accordance with the provisions of Bipartite Settlement applicable to him. In such circumstance the management charge sheeted him on 02.02.1991 for gross misconduct and he was called upon to submit his written statement of defence within seven days. In the charge sheet the management had explained in detail the allegations against the workman.

9. The disciplinary authority appointed an enquiry officer and a presenting officer to conduct a domestic enquiry into the charges levelled against the workman. They arranged copies of documents to be relied on by them to be provided to the workman and the list of witnesses they proposed to examine to prove the charges against him. In the departmental enquiry the workman was represented by a trade union representative for his defence. The defence representative cross examined the management witness at length. The enquiry officer afforded sufficient and reasonable opportunity to the workman to substantiate his contentions and opportunity was afforded to his representative to submit written arguments. After considering the evidence on record and the submissions by the parties the enquiry officer arrived at the conclusion that the workman had unauthorisedly drawn cheque No.484240 dated 01.06.1990 in favour of Shri P. Anil Kumar for ₹1,30,000/-. The disciplinary authority accepted the findings of the enquiry officer and forwarded copy of the report to the workman and communicated the proposed punishment to be imposed on him. After considering the representation dated 21.12.1991 in relation to the proposed punishment the disciplinary authority passed final order awarding him the punishment. Against that order the workman preferred an appeal before the appellate authority. The appellate authority considered the submissions of the workman and found that the punishment imposed by the disciplinary authority is just and proper.

10. The management has reproduced the relevant portion of the Bipartite Settlement and the Rules for punishment against the delinquent workman to substantiate their contention that punishment imposed by them is just, proper and in proportion to the gravity of the misconduct committed by the workman. They have requested to pass an award holding that the claim of the union is devoid of any merit and the workman involved is not entitled to any relief claimed.

11. Before the Industrial Tribunal, Kollam the management produced the enquiry file which is marked as Ext.M1. After passing the Preliminary Order afresh by this Tribunal on 16.06.2010 and after the disposal of the OP(LC)

No.1559/2011(O) and Writ Appeal No.638/2011, the management has not adduced any additional evidence nor produced additional documents.

12. After the disposal of the Writ Appeal No.638/2011 the counsel appearing for the parties here heard in detail.

13. The points arising for consideration are:

“(i) Whether the punishment imposed by the management i.e, stoppage of three increments permanently on Shri T S Asok Kumar is legal and justified?

(ii) If not, what relief the workman is entitled to?”

14. Point Nos.(i) & (ii):- The dispute referred for adjudication is:

**“Whether the action of the management of Vijaya Bank, Bangalore in imposing the punishment of stoppage of three increments permanently on Shri T. S. Asok Kumar, Clerk is legal and justified? If not, what relief is the said workman entitled to?”**

Admittedly Shri T. S. Asok Kumar, the workman involved in this reference was employed in the management bank. While employed as Clerk in the Thiruvalla branch of the management bank, the Assistant General Manager placed him under suspension pending initiation of disciplinary proceedings against him as per order No.MDZ:IRS:11341/90 dated 01.09.1990. Subsequently the management issued a memo dated 02.02.1991 wherein the charges alleged against the delinquent workman were explained in detail and his explanation was called for. The union have stated that the workman requested the management to peruse some records relied in support of the charges. The contention of the union is that the management failed to afford opportunity to the workman to go through those documents and instead ordered a domestic enquiry in relation to the charges levelled against him. After completing the domestic enquiry the management imposed the punishment of ‘stoppage of three increments permanently which will have effect of postponing his future increments’, as per order No.MDZ/IRS/16248/91 dated 26.12.1991. The appeal submitted by the workman against the punishment, before the appellate authority (Deputy General Manager) was dismissed. Thereafter the union raised the dispute and it was referred for adjudication.

15. The management has stated that the bank conducted an investigation relating to the misconduct committed by the workman and it revealed the following facts:-

“(i) That one Anil Kumar P, employed as clerk while discharging his duties as a clerk at the clearing counter of the Thiruvalla branch of the bank on 15.06.1989 came into possession of a blank cheque leaf bearing No.484240 of Bank of Baroda, Thiruvalla branch issued by them to one of their customers viz. Shri G. Radhakrishnan, holder of Savings Bank account No.3455 with them. Shri G. Radhakrishnan had visited the Thiruvalla branch of the management bank for depositing a cheque. Instead of returning the blank cheque to Shri Radhakrishnan or handing over the same to the officer/Branch Manager of Thiruvalla branch, the aforesaid Shri Anil Kumar unauthorisedly and illegally retained the same and passed it on to Shri T. S. Asok Kumar, another clerk of the same branch.

(ii) Later Shri Asok Kumar, a clerk of the management bank filled the above cheque leaf for ₹1,30,000/- and dated the same as 01.06.1990 besides writing the name of Shri Anil Kumar .P as payee and also forging the signature.

(iii) Thereafter Shri T. S. Asok Kumar sent the cheque to Shri Anil Kumar through Shri John Varghese, JND Collector for preparing the pay-in-slip for crediting the proceeds of the same to S. B. account No.969, maintained by Shri Anil Kumar at the Thiruvalla branch of the management bank.

(iv) That the aforesaid forged cheque was later sent by Shri Anil Kumar to the clearing section through the aforesaid JND Collector – Shri John Varghese.”

16. Page No.1 in Ext.M1 file is copy of the charge sheet dated 02.02.1991 issued against the workman. The charges levelled against the workman are:-

*“Your action of attempting for the fraudulent encashment of the cheque bearing No.484240 unauthorisedly drawn in favour of Sri Anil Kumar P for Rs.1,30,000/- on Bank of Baroda, Thiruvalla branch after forging the signature of the account holder and by depositing the same in the clearing on 1.6.90 and thereby attempted to defraud Bank of Baroda, Thiruvalla branch in connivance with Sri D.G.Nair and Sri Anil Kumar.P are acts*

*prejudicial to the interest of the bank which constitutes gross misconduct under sub-clause (j) of Clause 19.5 of Chapter XIX of the Bipartite Settlement 1966.”*

The finding of the enquiry officer Shri S. Karunakar Shetty, which forms part of Ext.M1 file is to the following effect:

*“Hence, the allegation against the CSE that he had unauthorisedly drawn cheque No.484240 in favour of Sri. Anil Kumar P for Rs.1,30,000/- is maintainable.”*

The enquiry officer has observed that the said cheque was written and signed by the charge sheeted employee and due to the said action by the CSE the cheque (which is marked as Ext.M3 in the disciplinary proceeding) was presented in the clearing section and returned unpaid and this action of the CSE is prejudicial to the interest of the bank. The finding of the enquiry officer is to the effect that the charge against CSE is partly proved which constitutes gross misconduct under sub-clause (j) of clause 19.5 of Chapter XIX of the Bipartite Settlement, 1966.

17. On the basis of the finding of the enquiry officer the disciplinary authority issued the punishment order against the workman. As per the judgment in OP No.15480/1997 dated 26.07.2005 the Hon'ble High Court of Kerala set aside the award in ID 21/1994 passed by the Industrial Tribunal, Kollam. Subsequently as per the Preliminary Order dated 16.06.2010 this Tribunal found that the enquiry is invalid and vitiated for violation of principles of natural justice and denial of reasonable opportunity to the charge sheeted employee. Against that order the management preferred OP(LC) No.1559/2011 before the Hon'ble High Court of Kerala. As per the judgment dated 29.04.2011 the Hon'ble High Court of Kerala confirmed the Preliminary Order passed by this Tribunal and held that there is no reason to interfere in the Preliminary Order passed by this Tribunal. Writ Appeal No.638/2011 filed against that judgment also ended in dismissal. After the disposal of the Writ Appeal management has not adduced any additional evidence to substantiate the disciplinary action initiated against the workman and the punishment imposed on him. As it now stands except Ext.M1 file there is no other document to substantiate the initiation of disciplinary proceedings and imposition of punishment against the workman.

18. The learned counsel for the management referred to the Ruling reported in U.P. State Spinning Co. Ltd. Vs. R. S. Pandey and another (2005) 8 SCC 264. In that decision the Hon'ble Supreme Court has held:

*“A. Labour Law – Domestic/Departmental enquiry - Natural justice – Non-supply of enquiry officer's report to delinquent employee – Effect on punishment imposed – Proper relief to be given in case of showing of prejudice having been caused to employee – Held, in all cases where said report is not furnished, court/tribunal should not mechanically set aside punishment order – It is only if court/tribunal finds that furnishing of report would have made a difference to result in the case that it should set aside punishment order – In case punishment order is so set aside, further held, proper relief to be granted is to direct reinstatement of employee with liberty to employer to proceed with the enquiry, by placing the employee under suspension and continuing the enquiry from stage of furnishing of report – Reinstatement made on setting aside of enquiry should be treated as reinstatement for purpose of holding a fresh enquiry and no more – Employee would not be entitled to back wages and other benefits on basis of such reinstatement and he would have to bide the culmination of the disciplinary proceedings and the said entitlement would depend on the final outcome therein – Reinstatement/Back Wages/Arrears – Reinstatement.”*

19. In the decision referred above the Hon'ble Supreme Court has followed the decision reported in the Managing Director, ECIL Vs. B. Karunakar (1993) 4 SCC 727. The learned counsel for the management submitted that in view of the finding by the Hon'ble High Court of Kerala that copy of the enquiry report was not furnished to the workman before passing the order of proposed punishment by the disciplinary authority; the proper procedure is to set aside the punishment and refer the matter back to the management for proceeding against the delinquent workman in accordance with law and after complying the procedural formalities. In this case admittedly the management has revoked the suspension order against the delinquent workman after a short period and the workman is continuing in service under the management.

20. The charges levelled against the workman are gross misconduct and it required action on the part of the management in accordance with the procedure for disciplinary proceedings if the management so desires. In such circumstance the only option is to set aside the punishment order passed by the disciplinary authority and to allow the disciplinary authority to proceed against the delinquent workman and complete the disciplinary proceeding from the stage of furnishing the report to him.

21. In the decision reported in the Managing Director ECIL Vs. B. Karunakar, the Hon'ble Supreme Court has held that *“The reinstatement made as a result of setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.”* In view of the dictum laid down in the decision referred above and in view of the facts and circumstances of the case the only option available is to set

aside the punishment imposed by the management and to direct the management to proceed against the delinquent workman from the stage of furnishing report and pass appropriate further orders in this regard, in accordance with law. The points are answered accordingly.

22. In view of the finding on the point Nos.(i) & (ii) the dispute referred for adjudication is answered as follows:

*That the punishment imposed by the management against the workman is set aside for the reasons explained in the points for consideration; that the management is permitted to proceed against the workman and continue the inquiry from the stage of furnishing the inquiry report to him. The disciplinary authority is permitted to proceed against the workman in accordance with law and in view of the observations made above."*

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 11<sup>th</sup> day of July, 2016.

SASIDHARAN K., Presiding Officer

#### APPENDIX - NIL

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2279.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोचीन के पंचाट (संदर्भ सं. 34/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-39025/01/2010-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2279.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Cochin as shown in the Annexure, in the Industrial Dispute between the management of Union Bank of India and their workmen, received by the Central Government on 16.11.2016.

[No. L-39025/01/2010-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

**Present:** Shri.K Sasidharan, B.Sc., LLB, Presiding Officer

(Thursday the 30<sup>th</sup> day of June, 2016/09<sup>th</sup> Ashadha, 1938)

**ID 34/2012**

Workman	:	Shri P. N. Saseendran Nair, Pournami House, Kuthukuzhi P.O., Kothamangalam, Kerala – 686691.
		By Adv. Shri P. N. Vijayan Nair
Management	:	The General Manager(P & HR), Union Bank of India, Central Office, Union Bank Bhavan, Bombay – 400 021.

By Adv. Shri K. S. Ajayagosh

This case coming up for final hearing on 20.06.2016 and this Tribunal-cum-Labour Court on 30.06.2016 passed the following:

### AWARD

This is an application filed by the workman under Section 2A(2) of the Industrial Disputes Act, 1947.

2. The contentions of the applicant in brief are as follows:

The applicant joined as sub-staff in the management bank. He had 28 years of service in the management bank. On 21.05.2010 while the workman was employed at the Mavelikkara branch of the management bank in the non-subordinate cadre as Cashier II, he was dismissed from service on the basis of an incident. He was given a supplementary charge sheet on another incident alleged to have occurred while he was working at Kadavoor branch of the management bank.

3. The workman joined at the Mavelikkara branch on 16.04.2008. He took charge as cashier in that branch on 18.04.2008. On 21.04.2008 (Monday) at about 12:00 noon, the Beverages Corporation office at Mavelikkara remitted their cash collections for two days in two packets. Since it was a busy day (Monday), several customers were waiting in the queue. The workman requested the person who brought money from the Beverages Corporation office, Mavelikkara to wait for some time. He did not oblige the request made by the workman. Instead he handed over the cash to the attender Mr. Shaji and left the office. After some time when the applicant was free, the sub-staff Mr. Shaji opened the cash packets and placed it before the workman for verification. It is found that the cash in the first packet was tallying with the denominations given in the credit slip submitted. The cash in the second packet was not tallying with the denominations given in the credit slip submitted. As per the credit voucher the amount is shown as ₹3,96,000/- whereas the cash remitted was only ₹2,96,000/-, showing a shortage of ₹1,00,000/-. On verification of the denominations of cash it was noticed that two sections of ₹500/- were not available in the marked packet. The matter was immediately reported to the Accountant who tried to contact the Beverages Corporation staff over telephone but they were not accessible. Then a bank staff was deputed to go to the shop and inform about the shortage. The bank staff who went to the Beverages Corporation office was informed by them that the person who remitted the cash was not available. The employee from BEVCO reached the management bank by 5:00 pm. He was not ready to admit the cash shortage of ₹1,00,000/-. Then the workman returned the packet with the cash and credit voucher to him. On the next day the employees from Beverages Corporation reached the management bank and threatened the workman with dire consequences if the shortage is not made good to them. An Assistant Sub-Inspector of Police who reached the branch also threatened the workman with torture and imprisonment in case the amount is not paid. The DGM of Union Bank of India, Regional Office, Trivandrum reached the Mavelikkara branch by 09:00 pm on the same day. He discussed the matter with the Manager – Shri.Purushothaman and advised the workman to adjust and give cash to the party or otherwise it may affect the reputation of the bank and may lead to loss of his employment. Even though the workman informed that he is innocent and has not done anything wrong and that he is not having money to pay the amount, the Deputy General Manager, compelled him to arrange the sum of ₹1,00,000/- to be paid to the party. He assured that nothing will happen to the workman if he does so. The workman was not having the funds to pay the amount as suggested by the Manager and the Deputy General Manager. The Special Assistant of the branch arranged a loan from and out of the amount in deposit in his name on the condition that the amount will be repaid within one or two days. He obtained a cheque for ₹1,00,000/- from the workman as security for repayment of the amount. As directed by the DGM, the amount was arranged by the workman which was paid to the customer. Thereafter the applicant contacted his brother and informed him about the matter in detail and borrowed money from his friends and relatives and remitted the amount in the bank account of the workman on the next day. The amount borrowed from the Special Assistant was repaid from and out of the aforesaid amount.

4. The second charge relates to an incident occurred when the workman was officiating as Cashier at the Union Bank of India, Kadavoor branch. The allegation was that on 15.11.2008 a customer of the branch namely, Shri. T. V. George, complained that on 14.02.2008 he had remitted a sum of ₹45,000/- in cash to his SB account and it has not been accounted in the registers of the bank whereas in the Passbook the workman made an entry to the effect that the amount has been credited to his SB account. At the time of the alleged incident the workman was employed as cashier at Kadavoor branch. On coming to know about the alleged incident the workman reached the Kadavoor branch after availing leave and he along with the Manager, Cashier and Accountant met the customer Mr.George and made enquiry as to what transpired on 14.02.2008. When questioned by the Manager, the customer Mr.George informed that he has not handed over the money to the workman and that he has not seen the workman any time before. Relating to that incident the workman was suspended from service on 31.01.2009. Subsequently a sum of ₹45,000/- was recovered from the Accountant Mr.Kuttappan and that matter was settled. The enquiry conducted in relation to that incident revealed that the workman had no involvement in that incident.

5. The workman was falsely implicated and dismissed from the service of the management bank so as to wreck vengeance against him. The workman had unblemished service of 28 years under the management bank and there was no occasion to doubt his integrity.

6. The correspondence between the branch and Regional office of the management unfolds the conspiracy to put the blame on the workman for one reason or another. The enquiry officer found that the management failed to prove the supplementary charge sheet dated 10.11.2009 issued against the workman. In relation to the charge sheet dated 18.05.2009, the person who complained to the bank has not been examined as a witness. The sub-staff who detected the shortage of money viz., Shri K. M. Shaji was not examined as a witness to prove the case of the management. Therefore the workman has requested to declare that the punishment imposed by the management in terminating his services under the management w.e.f.21.05.2010 as illegal and unjust and to reinstate him with back wages, continuity of service and other attendant benefits.

7. The averments in the written statement filed by the management in brief are as follows:

The management has denied all the averments in the application except those that are specifically admitted. While working as Head Cashier II on 21.04.2008 at the Mavelikkara branch it is reported that the workman has committed the following acts of omission and commission:

- “1. The Kerala State Beverages (Manufacturing & Marketing) Corporation Ltd. is maintaining CD Account No.20017 with Mavelikara Branch. On 21<sup>st</sup> April 2008, they deposited an amount of Rs.3,96,260/- in their CD Account. The said amount is their two days collection of 19<sup>th</sup> & 20<sup>th</sup> April, 2008. The relevant pay-in-slip and two packets containing two collections were handed over to the Head Cashier II, Sri. P.N. Saseendran Nair at around 12.00 noon and left the Branch.
2. Sri.Saseendran Nair kept the two packets containing the aforesaid cash inside the cash counter and took the same for counting the same after lunch on 21.04.2008. After counting the cash, he informed the then Accountant of the Branch Sri. V, Raghunandanan that there was a shortage of Rs.1 lakh in the denomination of Rs.500 notes. Sri. Raghunandanan immediately after verifying the voucher tried to contact Mr. Prasad, the Depot in charge of Kerala State Beverage (Manufacturing & Marketing). Since he was not available, Shri. K.M. Shaji, Daftary of the Branch was sent to their office to contact the responsible officer of the customer. In turn the branch was informed by the representatives of the Kerala State Beverage (Manufacturing & Marketing) Corporation Ltd. that before handing over the cash to the cashier of the bank, they had verified thoroughly. Since the branch could not locate the shortage of Rs.1 lakh they took back the cash with voucher for Rs.3,96,620/-
3. On 22<sup>nd</sup> April 2008, KSBC remitted the remaining amount of Rs.2,96,260/- and filed police complaint for the shortage of cash which they had handed over to the cashier of the bank. Accordingly, one Sub-Inspector of Police came to the branch in uniform and questioned Sri. Saseendran. However he stick to his stand that the shortage is there in that remittance. But on interrogation of Sri. G. Sreekumar, Manager of the branch, Sri. Saseendran Nair informed, “I have not taken the money. However, I am ready to remit the amount to avoid the police case’. On informing the same to the KSBC they agreed to withdraw the police complaint.
4. On 23<sup>rd</sup> April 2008, Mr. Saseendran Nair along with his brother deposited an amount of Rs.1,00,000/- in his SB Account No.2074019 and withdrew cash from his account vide his cheque No.077344 dated 23<sup>rd</sup> April 2008. It is therefore evident that he made good of Rs.1,00,000/- to KSBC being the shortage of cash deposited by them on 21<sup>st</sup> April 2008, which shows that he is responsible for the same.
5. Sri. P.N. Saseendran had availed LFC Advance of Rs.15,000/- in January 2008 from Kadavoor Branch and has not submitted relevant bill till date inspite of repeated reminders by the branch. Further he has availed advance of Rs.6000/- against travelling expenses in March 2008 against which only Rs.2,777/- was sanctioned by the Competent Authority and the balance amount of Rs.3223/- is still outstanding and he has not repaid the same till date.
6. Sri. P.N. Saseendran prior to his posting at Mavelikkara Branch was working Kadavoor Branch. One Mr.Babu was enjoying cash credit facilities with that branch. In the first week of March, 2008 the party reported to the Branch Manager, Kadavoor Branch that there was discrepancy in his statement of account. Though the party had remitted Rs.1 lakh in his account on 28/2/2008 the same was not reflected in his account. On verifying the books of account of the branch it is observed that there was no such entry in cash receiving register or any voucher to that effect. When the matter was referred to Sri. Saseendran, he denied receipt of any cash from that party on that day. But when the Branch officials made enquiry with the customer regarding the discrepancy in the statement of account he informed that the matter was closed since they got the money and has no complaint against the bank. However, no

other officials of the branch other than Sri. Saseendran had paid nay amount to Sri. Babu, which evidence that the same is done by him.”

8. In view of the aforesaid allegations against the workman, the management issued a show cause memorandum dated 21.07.2008 requiring the workman to submit his explanation. The workman submitted an explanation dated 19.08.2008. The explanation was not satisfactory and convincing. Hence the management decided to proceed further by holding departmental enquiry against him and he was charge sheeted for the acts and omissions on his part. He was charge sheeted for gross misconduct – doing acts prejudicial to the interest of the bank and minor misconduct – breach of any rule of the business of the bank or instruction running of any department. Shri K. V. Subramanian, Senior Manager(P), Regional Office, Trivandrum was appointed as the enquiry officer. The enquiry officer issued notice of enquiry to the delinquent workman intimating the date, time and place of enquiry. The enquiry officer conducted the enquiry in the presence of the delinquent workman and his representative Shri K. M. Mammen, Organization Secretary, Union Bank of India Employee’s Federation (Kerala). The enquiry officer conducted the enquiry after affording reasonable opportunity to the workman and his representative. It is stated that the enquiry officer has followed the principles of natural justice while conducting the enquiry. The enquiry officer submitted the finding holding that the delinquent workman is guilty of gross misconduct and minor misconduct as stated in the charge sheet.

9. Relating to the supplementary charge sheet a separate enquiry was conducted by the enquiry officer after affording opportunity to the workman and his representative to defend the case properly. Regarding the supplementary charge sheet the enquiry officer found that the management failed to prove the allegations against the delinquent workman.

10. The charges levelled against the workman in relation to the charge sheet dated 18.05.2009 were proved beyond doubt. Hence the management after affording opportunity to the workman to make his submissions and after hearing him passed an order to terminate him from the service of the management. According to the management the punishment imposed by them is in consonance with the gravity of the misconduct committed by the workman. They have requested to uphold their contentions.

11. After filing the written statement by the management the workman has not filed any rejoinder, even though opportunity was afforded to him.

12. As per the Preliminary Order dated 09.02.2016 this Tribunal held that the enquiry conducted by the management was valid and proper. Thereafter the matter was posted for final hearing. Heard both sides.

13. The points arising for consideration are:-

- “(i) **Whether the workman has committed gross misconduct as alleged in the charge sheet dated 18.05.2009 issued by the management?**
- (ii) **Whether the punishment imposed by the management against the workman is just and proper or disproportionate to the gravity of the allegations levelled against him?**
- (iii) **Reliefs and cost.”**

14. Point Nos.(i) & (ii):- It is the admitted case of the parties that Shri P. N. Saseendran Nair, the workman, initially joined as a sub-staff in the Union Bank of India. Subsequently he was promoted and working as Cashier II at the Mavelikkara branch of the management bank. He was dismissed from service on 21.05.2010 on the basis of an incident alleged to have occurred while he was working at the Mavelikkara branch in Trivandrum region of the management bank. A charge sheet dated 18.05.2009 was issued by the management to the workman and it forms part of Ext.M1 file. The allegation against the workman as per that charge sheet is that on 21.04.2008 an employee from the Kerala State Beverages Corporation (KSBC) remitted a sum of ₹3,96,260/- into their current account maintained at Mavelikkara branch. The workman noticed that there was shortage of ₹1,00,000/- in ₹500/- denominations in the cash remitted by KSBC. The matter was informed to KSBC. They did not accept the shortage. They remitted the sum of ₹2,96,260/- on 22.04.2008 and filed a police complaint regarding the shortage. It is stated that on coming to know about the police complaint the workman deposited a sum of ₹1,00,000/- in his SB account and withdrew cash as per Cheque No.77344 for giving to KSBC. According to the management the workman is responsible for the shortage of ₹1,00,000/- from and out of the amount remitted by the KSBC. Therefore the management charge sheeted the workman for gross misconduct – doing act prejudicial to the interest of the bank and minor misconduct – breach of any rule of the business of the bank or instruction for running of any department. It is stated that the management appointed Shri K. V. Subramanian, Senior Manager, Regional Office, Trivandrum as the enquiry officer. Ext.M1 is the enquiry file produced by the management. The document marked as Ext.MEX-1 by the enquiry officer, is the report dated 23.04.2008, submitted by the Senior Manager, Mavelikkara branch to the Deputy General Manager, Regional Office, Trivandrum intimating the shortage of cash to a tune of ₹1,00,000/- and involvement of the workman in that incident. Ext.MEX-2 marked by the enquiry officer is the report dated 05.05.2008 issued by the Chief Manager of the management branch.

15. Exts.MEX-3 and MEX-4 marked in the domestic enquiry are the letters dated 24.04.2008 and 05.05.2008 respectively submitted by the workman before the management. Ext.MEX-7 is the letter dated 29.04.2008 submitted by the sub-staff Shri K. M. Shaji to the Branch Manager of the Mavelikara branch. The case of the workman is that an employee from the Beverages Corporation came to the branch at about 01:00 pm on 21.04.2008 for remitting cash. Since it was a busy day (Monday) he directed the part-time sweeper to open the packets containing cash and count the same. It is stated that the cash tallied with the contents in packet No.1 and in the second packet there was shortage of two sections of ₹500/- denomination. He has stated that he informed the matter immediately to the Accountant who tried to contact the party over phone but could not get in touch with them. The workman has stated that he is innocent. He has further stated that if there is any omission on his part, he has requested to pardon him. In Exts.MEX-3 and MEX-4 the workman has stated that he arranged the money by contacting his brother and on the next day the amount was paid to the customer who remitted the amount to their credit.

16. It is the definite case of the management and it was the workman who is responsible for the shortage of cash to a tune of ₹1,00,000/-, remitted by the Kerala State Beverages Corporation. Even though the workman has pleaded innocence regarding the shortage of money and tried to implicate the part-time sweeper Mr. K. M. Shaji for the shortage of cash; there is no evidence to prove the involvement of the part-time sweeper Shri K. M. Shaji in the incident alleged. Before the enquiry officer, the witnesses examined on behalf of the management gave evidence to the effect that the workman is responsible for the shortage of cash to a tune of ₹1,00,000/-, remitted by the KSBC. The fact that there was shortage of money to a tune of ₹1,00,000/- from and out of the amount remitted by the Kerala State Beverages Corporation is clear from the letters issued by the workman as Exts.MEX-3 and MEX-4. The misconduct alleged against the workman is of grave nature and it is proved from the facts and circumstances of the case and also from the evidence tendered by the witnesses examined before the enquiry officer. It is the definite case of the management that it was the workman who received the cash in two packets from the customer – KSBC and kept inside the cash counter. It is the responsibility of the workman to count the money received from the customer.

17. The learned counsel for the workman referred to the Circular dated 01.07.2013 by the Reserve Bank of India. The learned counsel has submitted that the fraud if any in relation to cash shortage of more than ₹10,000/- ought to have been reported before the appropriate authority for further action. It is submitted that the management has not complied to the directions in the Circular dated 01.07.2013. The Circular is dated 01.07.2013. The incident alleged against the workman happened on 21.04.2008. In such circumstance the management cannot be blamed for non-compliance of the Circular dated 01.07.2013.

18. Even though the workman has alleged personal animosity against him by the management, there is no acceptable evidence to prove the same. On the other hand the documents marked in the domestic enquiry and the evidence tendered by the witnesses examined before the enquiry officer probabalise the fact that it was the workman Shri P. N. Saseendran Nair who is responsible for the shortage of cash to a tune of ₹1,00,000/- remitted by KSBC on 21.04.2008. Since the workman was employed as Head Cashier II at the Mavelikkara branch at the time of the alleged incident, he is answerable for the shortage of cash to a tune of ₹1,00,000/- remitted by the Kerala State Beverages Corporation. He has not given any satisfactory explanation for the shortage of cash to a tune of ₹1,00,000/-. The gravity of the misconduct committed by the workman is clear from the documents marked on behalf of the management during the enquiry.

19. The learned counsel for the workman referred to the Judgment in WP(C) No.35951 of 2009 dated 02.07.2014 passed by the Hon'ble High Court of Kerala, Ernakulam in L. Suseelan Vs. Indian Bank & Others. The dictum laid down in that judgment is not applicable to the facts of this case.

20. The learned counsel for the management referred to the Ruling by the Hon'ble Supreme Court of India reported in Appeal(Civil) 2055 of 2003 - State Bank of India & Ors. Vs. Ramesh Dinkar Punde. In that Ruling the Hon'ble Supreme Court of India has held:

*“If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterized as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts.*

*It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with.”*

21. The charges levelled against the workman stands proved from the evidence tendered by the witnesses examined on the side of the management, before the enquiry officer. In such circumstances it is held that the management has succeeded in proving the misconduct alleged against the workman in relation to the charge sheet dated 18.05.2009.

22. The next aspect is to be considered is whether the punishment of dismissal from service imposed by the management is just, proper or disproportionate. The workman is responsible for the shortage of ₹1,00,000/- remitted by a customer of the bank. He has not given any convincing explanation as to how the shortage to a tune of ₹1,00,000/- happened while he was holding charge as Cashier. Considering the gravity of the misconduct committed by the workman and its repercussion on the customer of the bank it is only just and reasonable to hold that the punishment imposed by the management is in proportion to the gravity of the misconduct committed by the workman. Therefore the points for consideration are answered against the workman.

23. Point No.(iii):- In view of the findings on Point Nos.(i) and (ii) the workman is not entitled any of the reliefs as per this application.

24. In the result an award is passed holding that the workman is not entitled to any relief as claimed in this application.

The Award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 30<sup>th</sup> day of June, 2016.

K. SASIDHARAN, Presiding Officer

#### APPENDIX

**Witness for the workman**

NIL

**Witness for the management**

MW1 29.10.2014

Shri. K.V. Subramanian

**Exhibit for the workman**

NIL

**Exhibit for the management**

M1 - Enquiry File.

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2280.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, शोलापुर के पंचाट (संदर्भ सं. 01/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-39025/01/2010-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2280.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Solapur as shown in the Annexure, in the Industrial Dispute between the management of Bank of Maharashtra and their workmen, received by the Central Government on 16.11.2016.

[No. L-39025/01/2010-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

**BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, SOLAPUR, MAHARASHTRA**

**Reference (I.T) No. 01 of 2011**

1. The Disciplinary Authority & The Assistant General Manager,  
Solapur Region, Solapur, Bank of Maharashtra,  
Regional Office, Solapur.  
  
R/o. : Gaikwad Building, Plot No.94, Pune Road,  
At Post : Solapur-413002.
2. The Chief Manager,  
(I. R. & Disciplinary Matter Centre ...FIRST PARTY  
Office, Lokmanyagar, 150,  
Shivajinagar, Pune – 5.
3. The Appellate Authority & Deputy General Manager,  
H.R.M.Department, Central Office, Lokmangal 1501,  
Shivajinagar, Pune – 411005.

**V E R S U S**

Shri. Siddheshwar Bhagwan Nagtilak,  
Age : 53 Years, Occu. : None, ...SECOND PARTY  
R/o. : At Post : Kem, Tal. : Karmala,  
District : Solapur.

**IN THE MATTER OF REFERENCE UNDER SECTION 10-A OF THE INDUSTRIAL  
DISPUTES ACT, 1947 (FIRST AWARD)**

Coram : P. R. Bharad, Presiding Officer, Industrial Tribunal, Solapur.  
Appearance : Advocate Shri. V. B. Marathe, for First Party.  
Advocate Shri. R. G. Mhetras, for Second Party.

**AWARD (FIRST PART) :-****(ORDER ON PRELIMINARY POINT OF ENQUIRY)**

(Delivered on 22<sup>nd</sup> June, 2016)

The present Reference is filed by the Second Party under Section 10 -A of the Industrial Disputes Act, 1947, wherein, it has been submitted that, the order of compulsory retirement from the services of Second Party dated 04/03/2010 passed by the First Party No.3, so also, the order passed by the First Party No.1 dated 30/10/2009, be treated as null and void. It is also submitted that, the punishment order dated 24/10/2009 passed by the First Party No.2, be declared as wrong and illegal and for further consequent award of wages from 29/10/2009.

At the outset, I would like to mention here that, the First Party filed the written statement vide Exh.C-12 and thereby, requested that, the preliminary issue may be framed regarding the legality and validity of the domestic enquiry in view of the compliance of the principles of natural justice. Considering the specific stand taken by the First Party, preliminary issue was framed by my Learned Predecessor vide Exh.O-4 and initially, both the parties, adduced their oral as well as documentary evidence before this Tribunal and hence, in the present Reference, the Award (First-Part) is being passed.

*The facts in a nut shell are as follows :-*

2. The Second Party was working as cashier cum clerk in the Bank of Maharashtra, Branch at Kem, since 01/03/1985. He served with the First Party Bank continuously for about 24 years. It is the case of the Second Party that, the First Party on 29/10/2009, in view of its order, compulsorily retired from the bank as well as for three different alleged misconducts, two increments each with concurrent effect, were lowered down. It is claimed that, the said order is nothing but dismissal of the Second Party from the services. According to the Second Party, on 25/05/2009, he was served with a charge – sheet and prior to that, he was kept under suspension from 13/09/2008. In view of the said charge – sheet, different charges were levelled against the delinquent / Second Party. Those are as under :-

**Charge No.1**

He misappropriated customer's money. His said acts are prejudicial to the interests of the bank and are likely to involve the bank in serious loss.

**Charge No.2**

He submitted a fake claim for Rs.18,034.60 under the scheme for reimbursement of hospitalization expenses and thereby tried to defraud the bank.

**Charge No.3**

While submitting claim for reimbursement of expenses for medical check-up he again claimed the bills which were already claimed by him under the scheme for reimbursement of hospitalization expenses. Thus, he submitted claim for same amount twice; firstly, on the basis of original bills and secondly, on the basis of copies of the bills. This way he tried to defraud the bank.

**Charge No.4**

He allowed misuse of the credit card facility which was issued to him for bona-fide use.

**Charge No.5**

He has incurred debt which is considered excessive considering his salary income and repayment capacity.

He was charged for violation of Clause 5(j) and 7 (I) of Bi-partite Settlement.

3. According to the Second Party, the Disciplinary Authority appointed the enquiry officer and on a single day, the domestic enquiry was concluded within 10 to 15 minutes and as such, the principles of natural justice were not followed. It is also submitted that, during the period of his suspension for about 18 months, he was not provided with a subsistence allowance and thereby, the First Party committed violation of bipartite settlement. It is further submitted that, though the order of subsistence allowance was made, several deductions towards the provident fund, insurance premium, society loan and subscription of the society were deducted.

4. It is the case of the Second Party that, before conducting the domestic enquiry, one Shri.Bangartale – the Assistant General Manager of the regional office, Solapur, assured the Second Party that, he will be permitted to work and the Disciplinary Authority will impose the punishment of withholding of the increments. On the basis of the said assurance given by the Assistant General Manager, according to the Second Party, on 15/06/2009, he put some signatures on the papers, which were not made known to the Second Party and as such, on 25/06/2009, the enquiry officer recorded his findings about the domestic enquiry. Thereafter, on 06/10/2009, the Disciplinary Authority communicated the proposed punishment and thereby, he was compulsorily retired from the services. It is the specific case of the Second Party that, in fact, there was no misappropriation on his part nor did he claim the medical reimbursement regarding his medical check-up as well as medical check-up of his better-half.

5. It is alleged that, no opportunity was provided to the Second Party to defend himself nor there was any fair play and as such, the principles of natural justice were not followed during the course of domestic enquiry. According to the Second Party, against the order of Disciplinary Authority, he had preferred an Appeal before the Appellate Authority of the Party No.1. The said Authority on 29/10/2009, confirmed the impugned order or punishment with a modification to allow the punishments to run concurrently. As such, according to the Second Party, his past unblemished service was not considered and in fact, he ought to have been allowed to work. Consequently, the Second Party has filed the present Reference and thereby, prayed to declare that, the order of punishment passed by the Disciplinary Authority dated 30/10/2009 as well as the order of punishment passed by the Appellate Authority dated 04/03/2010, be declared as null and void. It is further claimed to set aside the order of punishment dated 24/10/2009 with a direction to allow him to work. He has further claimed the arrears of pay since 29/10/2009.

6. The First Party filed the say cum written statement vide Exh.C-12 and thereby, admitted that, the Second Party was working as cashier cum clerk in its branch situated at Kem. It is also admitted that, in view of the order dated 29/10/2009, he was compulsorily retired from the service and prior to that, due process of law was followed by conducting the domestic enquiry. It is further denied that, the Disciplinary Authority did not follow the principles of natural justice nor an opportunity was given to the Second Party to defend his case. It is the case of the First Party that, the Second Party admitted the charges levelled against him in writing not only before the enquiry officer, but also, before the Appellate Authority and considering the gravity of the charges levelled against the delinquent, according to the First Party, he was retired from the services compulsorily.

7. It is further contended that, on 25/05/2009, a charge-sheet was issued and thereafter, the Disciplinary Authority and the Assistant General Manager, Solapur, conducted the domestic enquiry and along with the charge – sheet, as many as 31 documents were provided to the Second Party. On 25/06/2009, according to the First Party, the Second Party, categorically admitted all charges framed against him before the enquiry officer and even at the relevant time, the Second Party engaged one Mr.Gajjam–president of Bank of Maharashtra Employees' Union to defend himself. After the domestic enquiry, according to the First Party, on 06/10/2009, by issuing one letter, another opportunity was given to the Second Party and he had submitted his say. Again vide letter dated 10/10/2009 he admitted all the charges levelled against him with a request to take a sympathetic and lenient view. The Disciplinary Authority, according to the

First Party on 20/10/2009, issued a notice to the Second Party with regard to the proposed punishments and granted him an opportunity of personal hearing on 23/10/2009. In the course of personal hearing, according to the First Party, the Second Party requested for leniency and confirmed having admitted the charges, unconditionally. It is claimed that, by carrying due process of law scrupulously, the Disciplinary Authority has issued an order dated 24/10/2009. Even, according to the First Party, the Appellate Authority gave personal hearing and before the Appellate Authority also, the Second Party confirmed having admitted the charges in the domestic enquiry. It is denied that, Shri.Bangartale, the then Assistant General Manager, regional office, Solapur, gave assurance of taking lenient view in the domestic enquiry and that, there was any misrepresentation on the part of the Party No.1. The punishments awarded, according to the First Party are proportionate to the grave and serious misconducts of misappropriation on the part of the Second Party and as such, in the last, a prayer is made to reject the Reference.

8. The Second Party adduced the evidence by filing an affidavit Exh. UW-1, so also, filed on record as many as 9 documents along with list Exh.U-5. Gone through the various documents which are filed in respect of domestic enquiry. Heard the Learned Advocate Shri.V.B.Marathe for the First Party and the Learned Advocate Shri.R.G.Mhetras for the Second Party.

9. Following are the preliminary issues and my findings thereon :-

Sr. No.	PRELIMINARY ISSUES	FINDINGS
I.	Whether the domestic enquiry conducted against the second party / employee was legal, fair, proper and in accordance with principles of natural justice ?	Yes
II.	Whether findings recorded by enquiry officer are perverse ?	No
III.	What Order ?	As per final order.

#### REASONS

#### AS TO ISSUE NOS. I TO III

10. Some of the admitted facts of this matter, can be summarized as under :-

- It is not in dispute that, on 25/05/2009, the Second Party was served with a charge – sheet by the Disciplinary Authority.
- It is not in dispute that, vide letter dated 22/06/2009, the Second Party was asked by A. Subramanyam that, he has been appointed as enquiry officer in the domestic enquiry and in the same letter, the enquiry officer informed that, he has proposed to conduct the enquiry on 24/06/2009 at regional office, Solapur.
- It is also not in dispute that, on 24/06/2009, for the domestic enquiry, the enquiry officer A. Subramanyam, presenting officer Shri.M.M.Adam and the Second Party Mr.S.B.Nagtilak was present and on that day, as the Second Party informed that, he has not finalized his defence representative, domestic enquiry was adjourned and the next hearing was fixed on 25/06/2009.
- On 25/06/2009, the Second Party informed to the Disciplinary Authority that, he has engaged Shri S.Y. Gajjam as his defence representative and on 25/06/2009 itself, the Second Party submitted another letter accepting the charges.

11. In view of the above admitted position, it is necessary to reproduce some of the contents in the letter given by the Second Party to the enquiry officer on 25/06/2009, as under :-

A departmental enquiry has been initiated against me vide charge sheet No. AX10/ST/DA/SBN/2580/2008-09 dated 25.05.20098.

In the matter I have to submit as under -

- During the period in which I have committed the mistakes, I was going through severe financial hardships and also family problems. I was disturbed psychologically also.
- In the process I have lost my conscious and ultimately knowingly / unknowingly all these mistakes have taken place.
- I entirely accept the blame and express regret for the same. I apologize for the same and assure you that in future I would exercise all necessary precautions so that no such incidence will recur.

4. I belong to downtrodden community and I am the first in generation who is earning & with this I am carrying out education of my children who are studying in colleges. My family members are solely dependent on me and I have to cater to all their requirements.
5. In the process of upbringing of my family I was passing through severe financial crunch and this is the reason which ultimately has landed me in this undesirable situation.
6. I request your goodselves to please pardon me and take a lenient view so that I should not loose job which is bread and butter not only for me but also for my family which is solely dependent on me, for which act of kindness, I would ever be grateful to you.

*(Emphasis Mine)*

Thanking you,

Sd/-

S. P. NAGTILAK

CSE

Place – Ujani colony branch Solapur

Date – 25.06.2009

12. In view of the above admitted position, the moot question which cropped up before me is what is the value of the admission given by the delinquent in the domestic enquiry and what is the effect of the said admission on the domestic enquiry. Even, the Second Party has submitted in the statement of claim in paragraph No.6, on page No.7 that, the Disciplinary Authority assured him that, he will be allowed for work and by stopping some increments, the domestic enquiry will be completed. On the above assurance, according to the Second Party, he put some signatures on the papers which were not made known to him and as such, gave admission. It is submitted that, he was misrepresented, so also, a fraud was played on him for obtaining his admission and he was induced to tender the admission by giving assurance that, increments will be stopped in the domestic enquiry instead of dismissing him. It is worthy to note that, these submissions were made by the Second Party in the statement of claim. It is pertinent to note that, as he has made some allegations by making assertions, it is the burden on him to prove those allegations or assertions. Be that as it may, at this juncture, while deciding the preliminary issues, it will be just and proper to see as to what is the effect of the admission given by the Second Party on the departmental enquiry.

13. The Learned Advocate Shri.R.G.Mhetras appearing for the Second Party, has submitted that, the enquiry officer was not fair, moreover, no opportunity was given him to put forth his defence. It is further submitted that, even the Second Party was not provided with the documentary evidence which the Disciplinary Authority relied upon in the domestic enquiry. It is claimed that, the domestic enquiry conducted against the Second Party was illegal, unfair and unjust and it was not in accordance with the principles of natural justice. According to Mr.Mhetras, even the findings recorded by the enquiry officer are perverse as according to him, on 25/06/2009 itself, the findings were recorded which were communicated to him on 06/10/2009 by the Disciplinary Authority.

14. To substantiate his stand, the Learned Advocate Shri.R.G.Mhetras appearing for the Second Party has relied upon the judgment of our High Court in the case of *Canara Bank, Bombay V/s. Eastern Mechanical Works, Bombay [2008(5) Mh.L.J.720]* and submitted that, as in the present proceeding, the First Party failed to adduce the evidence, it can be treated that, it has failed to establish its stand. For that purpose, he has drawn my attention towards paragraph Nos. 33 to 37 of the judgment, in which, there is discussion about Order 8, Rule 1 of C.P.C. It has been ruled in the said judgment that, where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself for examination by the other side, presumptive case set up by him is not correct. Strictly speaking, the judgment cannot made applicable to the case on hand as the same is with regard to the civil suit about recovery of outstanding debt inclusive of interest. In the domestic enquiry, the said procedure is not required as the enquiry officer has submitted his report, moreover, in the present case on hand, the Second Party has specifically admitted the charges levelled against him on 25/06/2009, under his signature by a separate letter. Consequently, to my mind, though the First Party failed to adduce evidence with regard to the preliminary issues, the said failure does not come in the way as in the civil matter, the allegation is to be proved by producing strict evidence and the burden of proof to prove the same is of high quality. On the contrary, in the domestic enquiry, the said nature of burden or proof, is not required and on the basis of preponderance of probabilities, the matter can be resolved.

15. The Learned Advocate Shri.V.B.Marathe appearing for the First Party has submitted that, as the Second Party has admitted the charges levelled against him, it can be said that, on the said admission, the matter can be adjudicated and guilt of the delinquent in respect of indiscipline in the domestic enquiry can be said to be proved. For that purpose, he has relied upon the judgment of the Apex Court in the case of *Channabasappa Basappa Happali V/s. State of Mysore (equivalent citation : 1972 AIR 32)*. In the said judgment, following observations are made by the Apex Court with regard to the admission of facts as under :-

The admission of the facts by the appellant amounted to a plea of guilty on the facts on which the appellant was charged. The police constable here was not on his trial for a criminal offence. It was a departmental enquiry, on facts, of which due notice was given to him. He admitted the facts. There was no distinction between admission of facts and admission of guilt. When he admitted the facts, he was guilty. The facts speak for themselves. It was a clear case of indiscipline and nothing else. If a police officer remains absent without leave and also resorts to officer the indiscipline is fully established.

Having regard to the above judgment, it can be said that, the same can be made applicable to the case on hand and as on 25/06/2009, the Second Party had specifically admitted the charges levelled against him, there are reasons to say that, those are held to be proved and in such circumstances, there is no need to proceed with the departmental enquiry. The enquiry officer, to my mind, has thereafter rightly concluded the matter and recorded his findings.

16. The Learned Advocate Shri.V.B.Marathe appearing on behalf of the First Party, during the course of his arguments, has further submitted that, in the present matter, reasonable opportunity was given to the Second Party in the domestic enquiry and as the Second Party has admitted the charges, there are reasons to say that, an opportunity was given to him. He has relied upon the judgment of Hon'ble the Supreme Court in the case of *State of Uttar Pradesh V/s. Om Prakash Gupta [1969 (3) S.C.C. 775]*. In the said judgment, by making a reference to Section 240 of the Government of India Act, 1935 as well as Article 311 (2) of the Constitution, the meaning of rule of natural justice has been discussed. The reasonable opportunity is held to be proved when opportunity to deny and establish the innocence is given, so also, an opportunity to cross – examine the witnesses produced is given to the delinquent. It is further held that, an opportunity to examine himself and the witnesses on behalf of the party can be held to be the reasonable opportunity. It is also ruled that, an opportunity to show cause against the proposed punishment is also one of the requirements to say that, the reasonable opportunity was given. In the present matter, after giving the charge – sheet to the Second Party, he was allowed to engage his defence representative. Moreover, in view of his submission, the matter was adjourned. On 25/06/2009, as the Second Party had tendered a letter and admitted the charges levelled against him, there are reasons to say that, the reasonable and sufficient opportunity was given to him in view of which, he had admitted the guilt and as such, there are reasons to say that, the principles of natural justice were followed by the enquiry officer. Consequently, the judgment relied upon can be said to be made applicable to the case on hand.

17. With regard to the effect of admission given by the delinquent, it is necessary to refer to the judgment of our Hon'ble High Court in the case of *Employees' State Insurance... V/s. Shri.A.V.Tungare (Writ Petition No.2296 of 2002, dated 14<sup>th</sup> March 2014)*. That was the case in which, the employee of Employees' State Insurance Corporation was dismissed from the service after initiating the domestic enquiry against him. In the said domestic enquiry, the employee gave admission and admitted the charges levelled against him and on the basis of the said admission given by the employee, he was dismissed from service by the Disciplinary Authority. The said domestic enquiry was challenged before the Central Administrative Tribunal, Mumbai, which in view of the judgment, set aside the order of punishment and reinstated the employee. The said judgment was challenged before our Hon'ble High Court. By making reference to the several judgments of the Apex Court, it was held that, as the employee had given admission and admitted the charges levelled against him, there was no need to proceed with the domestic enquiry and as such, the judgment of the Central Administrative Tribunal was set aside and the decision of the Disciplinary Authority was maintained. In the said judgment, a reference is made to Section 58 of the Evidence Act, which is in respect of admission on the part of the party. In paragraph No.17, with regard to the provisions of Section 58 of the Evidence Act, following observations are found :—

In this context, to appreciate the consequence of admission of a fact the general position in law can be seen by referring to the provisions of Section 58 of the Evidence Act. Section 58 deals with the facts which are admitted and hence not required to be proved. It provides that no fact need to be proved in any proceedings which the parties thereto or their agents agree to admit at the hearing or which before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings. The proviso to this section states that the Court may in its discretion, require the facts to be admitted to be proved otherwise than by such admissions. The 1st respondent in writing had admitted to the charges and hence as a legal requirement such admission becomes relevant. The charges which are admitted by the 1st respondent were not required to be proved and the inquiry can be said to be rightly closed. Pertinently the 1st respondent agreed to close the enquiry.

This can be said to be an identical case to the case on hand and as in the present matter, the Second Party has admitted the charges levelled against him, to my mind, the said admission itself goes to show that, proper opportunity was tendered to him, so also, the principles of natural justice were followed.

18. It is also necessary to refer to the judgment of the Apex Court in the case of Additional District Magistrate (City) V/s. Prabhakar Chaturdevi & Anr., (AIR 1961 S.C. 1070). That was also the case of misappropriation of money by an employee. Against him, the disciplinary enquiry was conducted, in which, the employee had admitted the charges levelled against him. The matter went to the High Court, wherein, the Allahabad High Court held that, adequate opportunity was not given to the employee to defend him and as such, reinstated him with full back wages. The said matter was challenged in Hon'ble the Supreme Court. In paragraph No.4, Hon'ble the Supreme Court held that, "on account of clear admission contained in writing given by the respondent, the charges against him stood proved on admission and the only question that remained to be considered was about the nature of the punishment to be imposed on him". Consequently, the judgment of Allahabad High Court, was set aside.

19. In another judgment of the Apex Court in the case of Delhi Transport Corporation V/s. Shyam Lal (1996 (2) SCC 12), regarding the admission, following observations are found in the paragraph No.7 as under :-

"7. We find that the Tribunal's conclusions are prima facie not correct. The statement made by the passenger who had paid excess money to the checking officer is not in the nature of hearsay evidence. Additionally, the effect of the admission regarding guilt as contained in the letters dated 13.1.1989 and 24.2.1989 have not been considered in the proper perspective. It is a fairly settled position in law that admission is the best piece of evidence against the person making the admission. It is however, open to the person making the admission to show why the admission is not to be acted upon."

(Emphasis Mine)

20. A reference can be made to the judgment of Hon'ble the Supreme Court in the case of Chairman and Managing Director V/s. Goparaju Sri Prabhakar Haribabu (2004(8)SCC 88). In the said judgment also, in a disciplinary proceeding, the employee had accepted the guilt whereupon the enquiry proceedings were closed recording the admission of the charges made by the employee. The Disciplinary Authority upon considering the enquiry report held the employee guilty of all charges and ordered him to be removed. With regard to the admission in the said case, the Apex Court has made a reference to Section 58 of the Evidence Act and observed that charges having been admitted were not required to be proved. It was on the premise that the enquiry proceeding was closed. In the same judgment, in paragraph No.19, it is observed that, a subsequent explanation before another authority, which had not been pleaded in the departmental proceedings, cannot by itself a ground to hold that, the principles of natural justice had not been complied with in the disciplinary proceedings.

In such circumstances, there are reasons to say that, even the principles of natural justice have been followed in the present domestic enquiry.

21. In respect of the admission in the domestic enquiry given by the employee, it is also necessary to refer to the judgment of our Hon'ble High Court in the case of Canara Bank V/s. H. T. Koli (equivalent citation : [(2000) III LLJ 277 (Bom)]. In the said judgment, our Hon'ble High Court in paragraph No.6 has observed that, when the admission given by the employee was found to be voluntary, the same can be acted upon and the only conclusion that can be drawn on the basis of the employee's admission is that, the charge against him is proved.

Having regard to the admission given by the Second Party in the present proceeding on 25/06/2009, there are reasons to say that, it was a voluntary admission and at the relevant time, there was no evidence that, it was obtained by making misrepresentation or fraud and as such, the voluntary admission of guilt or charges levelled against the Second Party, can be said to be proved against him.

22. Considering the above case laws and the specific admission given by the Second Party, it can be said that, not only on 25/06/2009 before the enquiry officer, but even before the Appellate Authority, the Second Party has admitted his guilt and the charges levelled against him and prayed for taking lenient view. This admission cannot be said to be obtained by misrepresentation or fraud or duress and in that respect, the allegations made in the present proceeding can be said to be afterthought one. The enquiry officer has closed the proceeding on 25/06/2009 itself after the admission given by the delinquent / Second Party and the findings were communicated to the Disciplinary Authority who thereafter imposed the punishment. The due process of law, to my mind, is followed by the enquiry officer as well as the Disciplinary Authority and the Appellate Authority as the Second Party was called upon to submit his say on the point of punishment and moreover, personal hearing was given to him. Consequently, there are reasons to say that, at every stage of domestic enquiry, fair opportunity was given to the delinquent.

23. The Learned Advocate Shri.R.G.Mhetras, during the course of his arguments, has also submitted that, in the present matter, after the Second Party was kept under suspension, no subsistence allowance was paid and as such, the non payment of subsistence allowance, vitiates the enquiry proceedings. For that purpose, he has placed reliance on the judgment of Hon'ble the Supreme Court in the case of Capt. M. Paul Anthony V/s. Bharat Gold Mines Ltd., and another (AIR 1999 Supreme Court 1416). I have gone through the judgment wherein, it has been ruled that, if non payment of subsistence allowance to an employee during the course of suspension prejudices him, there are reasons to say that, the enquiry stands vitiate. In the said matter, as the subsistence allowance was not given to the employee, he

was unable to attend the enquiry proceeding. Moreover, on account of non payment of subsistence allowance during the pendency of the departmental proceedings, he could not undertake a journey from his hometown and as such, he was unable to defend himself. The said proceeding was completed ex-parte and in such circumstances, it was held that, the departmental enquiry stands vitiated on account of non payment of subsistence allowance. This is not the case in the present matter. The Second Party was present and he had engaged the defence representative, so also, he made admission about his guilt. Even if it is considered that, the subsistence allowance was not paid, the Second Party has not proved that the same caused prejudice to him. As such, the judgment is not helpful to the Second Party. The reliance placed by the Learned Advocate Shri.R.G.Mhetras with regard to the non payment of subsistence allowance on the case of *Fakirbhai Fulabhai Solanki V/s. Presiding Officer and Another (1986 (SCC) (L&S) 411)*, cannot be said to be acceptable as in the present matter, nothing has been proved that the non payment of subsistence allowance caused prejudice to the Second Party. Consequently, to my mind, this judgment is also not helpful to the Second Party.

24. The Learned Advocate Shri.V.B.Marathe, during the course of his arguments, placed reliance on the judgment of the Apex Court in the case of *Indra Bhanu Gaur V/s. Committee, Management of M. M. Degree College and Others (2004) 1 Supreme Court Cases 281* and submitted that, non payment of subsistence allowance during the suspension period, does not vitiate the enquiry proceedings in every case. It was held that, when no stand was taken before the authorities that because of non payment of subsistence allowance, the employee was in any way incapacitated or any prejudice was caused to him in defending the proceeding, the ground that subsistence allowance was not paid cannot ipso facto vitiate the proceedings. At the cost of repetition, I would like to say that, in the present matter also, no plea was raised that, due to the non payment of subsistence allowance, the Second Party was not able to engage the defence representative or it was not possible for him to attend the proceedings and as such to my mind, the non payment of subsistence allowance in the present matter, in no way vitiated the proceedings.

25. With regard to the non payment of subsistence allowance, to my mind, the Second Party has made inconsistent pleadings. On one hand, it has been submitted that, the subsistence allowance was not paid, but on the other, it has been submitted that, from the subsistence allowance which was paid to him, deductions were made towards the provident fund, LIC premium and Society loan etc. As such, the stand taken by the Second Party that, no subsistence allowance was paid to him, cannot be accepted as he is trying to blow hot and cold nor that can be said to be a ground to say that, the principles of natural justice were not followed.

26. Having regard to the observations made supra, there are reasons to say that, the domestic enquiry conducted against the Second Party, is legal, fair and valid and moreover, it was followed in accordance with the principles of natural justice. Even, the findings arrived at by the enquiry officer having regard to the misappropriation on the part of the Second Party, cannot be said to be perverse. Consequently, the issues are answered in the given manner and hence, the Award (First Part) is passed accordingly :-

**:- AWARD (FIRST PART) :-**

1. It is hereby held and declared that, the domestic enquiry conducted against the Second Party / Employee is legal, fair and proper and in accordance with the principles of natural justice.
2. The findings drawn by the enquiry officer, are legal and valid.
3. The Award (First Part) be drawn accordingly and the copy of the same be sent to the Competent Authorities for information and further necessary action.
4. The Reference will proceed further on merits.

Date: 22.06.2016

Place: Solapur

P. R. BHARAD, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2281.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय, अहमदनगर के पंचाट (संदर्भ सं. 15/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-12012/04/2015-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2281.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2015) of the Industrial Tribunal, Ahmednagar as shown in the Annexure, in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 16.11.2016.

[No. L-12012/04/2015-IR (B-II)]

RAVI KUMAR, Desk Officer

### ANNEXURE

**BEFORE SHRI P. W. BHUYAR , PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,  
MAHARASHTRA AT : AHMEDNAGAR.**

**REFERENCE (IT) NO. 15 OF 2015**

#### BETWEEN :

The Regional Manager,  
Central Bank of India,  
MIDC, Navnagapur,  
Ahmednagar

...First Party

#### And

Abasaheb Annasaheb Kale,  
At- Baburdi, Post- Madhewadgaon,  
Tal- Shrigonda,  
Dist- Ahmednagar

...Second Party

#### INTERIM AWARD BELOW Exh. U-3

(Delivered on 28-04-2016)

1. The Deputy Chief Labour Commissioner (Central), Mumbai has made a Reference u/s- 10 (1) r/w- Items- 12 (5) of the Industrial Disputes Act, 1947 for adjudication of the dispute between second party workman and 1<sup>st</sup> party bank.

2. It is the contentions of the 2<sup>nd</sup> party workman was came to be engaged as a part time daily wages from 3-5-2004 and he used to discharge the work of permanent nature and duration. Though he was classified as a daily wager still he use to discharge the work through out the bank working hours. He use to clean the premises of the branch office, toilets, and other unskilled work connected thereto. He also use to carry the cheques from employer bank to other bank within its operational area. He also use to discharge the work of local clearing. Initially he was posted at Shrigonda branch in Shrigonda Taluka and he has rendered a continuous service from 3-5-2004 to 31-8-2010 and thereafter from 6-9-2010 to 31-5-2011. It is further submitted that during the period of his employment the workman use to get only Rs. 50/- by way of wages. The workman further state and submit that the employer bank never extended the benefits of permanency/regularization etc. to the workman though he has rendered more than 7 to 8 years of service. It is also submitted that the workman discharged the work of permanent duration and permanent nature during the period of his employment. It is also pertinent to note that the bank did not extend the benefits of wages and other service benefits as per circulars issued from time to time to that effect. Needless to say the work of workman is extracted by the bank keeping him on very low wages. It is further submitted that the workman deserves a relief of regularization and permanency.

3. The workman further submit that from June 2011 the employer bank did not provide any work to him through he use to attend the bank premises from time to time. His request was not considered by the bank and the work which was performed by the workman was carried on by appointing another casual employee in his place. The said act is done by the employer just to deprive the workman from status and benefits of permanency. The workman has rendered a service for about 4 to 5 years and the recruitment for the said post is also cancelled by the employer bank though the workman was eligible and qualified for the said post. The workman is suffering irreparable loss and injury due to illegal acts committed by the employer bank and by restraining the workman from resuming on duty. The workman has a good prima facie and balance of convenience also lies in his favour and therefore prayed for allowed to 2<sup>nd</sup> party workman to resume on duty and earn the wages as per rules.

4. The 2<sup>nd</sup> party workman filed the documents below Exh. U-4 documents are xerox copy of application given by 2<sup>nd</sup> party to first party dated 31-1-2013, , Xerox copy of office circular dated 4-10-1990, xerox copy of circular letter dt. 16-9-2000, xerox copy of circular letter to all branches dt. 2-7-2001, xerox copy of letter dt. 17-8-2002, xerox copy of letter given by pimpagaon branch of first party to regional manager dt. 14-2-2011, Application given by 2<sup>nd</sup> party to first party dt. 11-7-2011, xerox copy of letter of regional office dt. 12-11-2011, xerox copy of letter given by Pune

branch dt. 14-11-2011, xerox copy of circular dt. 20-8- 2012, xerox copy of notice about recruitment, xerox copy of advertise about recruitment, xerox copy of paper advertisement dt. 25-1-2013 etc.

5. The 1<sup>st</sup> party filed their written statement vide Exh.C-3. It is the contentions of the 1<sup>st</sup> party contents in para 1 of the statement of claim filed by workman are not true and correct and same are not admitted by the bank. However it is true that 2<sup>nd</sup> party was engaged as a daily wager by 1<sup>st</sup> party. The 2<sup>nd</sup> party was never in the permanent employment of 1<sup>st</sup> party. He was engaged by the 1<sup>st</sup> party on daily wages at Shrigonda branch. No particular work was assigned to the 2<sup>nd</sup> party. He was called when and whenever required by the 1<sup>st</sup> party for doing particular work for specific time only and he was paid wages as per rules and regulations made by the management of first party in that regard. The work assigned to him was depended upon the availability at that particular time. The first party craves the leave of the Hon'ble court to produce the necessary documents before it at the appropriate stage in the matter of wages to the 2<sup>nd</sup> party. The 1<sup>st</sup> party had never replaced 2<sup>nd</sup> party on the vacant post. It is strongly objected and denied by the first party that 2<sup>nd</sup> party was constrained and denied by the 1<sup>st</sup> party that 2<sup>nd</sup> party was constrained to work on holidays and beyond normal working hours. These statements of the 2<sup>nd</sup> party are imaginary, illusionary and bogus. It is not correct that 2<sup>nd</sup> party rendered a continuous service from 3-1-2004 to 31-8-2010 and 6-9-2010 to 31-5-2011. The all other contents in para 2 of the statement of claim are denied by 1<sup>st</sup> party. The all other contents in para 2 of the statement of claim are denied by 1<sup>st</sup> party. The manager or no one in the bank had never assure 2<sup>nd</sup> party permanency and regularization of employment. The vacant post of the bank was filled by as per rules made in that regard. The appointment of MR. Kothambire was carried out as per rules and regulations, dispute created by the workman in that regard is false. It is not true that workman has discharged any clerical work in addition to the work of sweeping. It is absolutely false and specifically denied by the 1<sup>st</sup> party that the work assigned to the workman was of permanent duration and continuous nature and workman has rendered continuous service and each year of service he worked more than 240 days. Workman was working on daily wages. His nature of work and duration of it was depended upon the availability of work. Hence it was no necessary to avail benefits of permanent employee to workman. It is not true that he was paid wages of Rs. 50/- per day by bank. The appointment of Mr. Udawant was carried as per rules and regulations, dispute created by the workman in that regard is false. The contents in para No. 3 are not true and correct and specifically denied by the 1<sup>st</sup> party. Workman never worked for about 268 days from 6-9-2010 to 31-5-2011 at pimpalgaon Pisa Tal Shrigonda as against vacant post. He never worked continuously for about 268 days. That in so far as the actual period for which the party No. 2 has worked on daily wages , all other adverse allegations not specifically replied to are hereby denied.

6. The contents in para 4 are not true and correct. The bank denied same. It is true that Management of bank has issued several circulars. Party No. 2 workman was never employed by the part No. 1 bank either permanently or on a temporary basic. He was engaged as a daily wager depending upon the availability of work. Hence provisions mentioned in those circulars did not apply to him. The contention of the workman in para No. 4 that it is pertinent to note that the workman posted at the relevant branches of the bank use to discharge the work of permanent nature regularly and through out banking hours, that by itself indicates that the workman is eligible and entitled for the claim of regularizations, is true and correct. It is submitted that party No. 2 was always working at the aforesaid branch on daily wages. He was given to understand in specific terms that he would be paid wages for each days work and that he will not be entitled for permanency or regularization in the employment of the bank. Therefore his employment in the bank used to commence on each day on which work was provide to him and it used to come to an end, the same day at the end of the working hours of the said branch. All other contentions in para No. 4 are repetitive in nature, the bank had already denied it. All other adverse allegations are denied by bank.

7. The contents in para No. 5 are not true and correct and specifically denied by the 1<sup>st</sup> party. Workman was engaged by 1<sup>st</sup> party on daily wages. He was never P.T.S.K. sub staff of the bank. It is not true that workman was deprived from the benefit of regularization. The contentions of workman in this para are exaggerative in nature. The 2<sup>nd</sup> party was never employed by the 1<sup>st</sup> party either permanently or on a temporary basic. He was engaged as a daily wager depending upon the availability of work. Therefore demand of workman is itself unlawful. Hence there were no question of unfair labour practice by the 1<sup>st</sup> party. The circular dated 14-11-2011 issued by regional office, pune was only to gather information of temporary workers who have worked in the branches of the 1<sup>st</sup> party. Nowhere it was mentioned in that circular that they will be recruited by the 1<sup>st</sup> party. Therefore contentions made by the 2<sup>nd</sup> party in para No. 6 were not true and correct. It is also not true and correct that workman has fulfilled all those conditions and the managers of the respective branches also recommended the name of the workman for said recruitment. It is absolutely false that workman was already in the employment of employer bank. Advertisement in respect of recruitment on 11-2-2013 by Ahmednagar regional office was cancelled by the central office. The A.nagar regional office is merged into Aurangabad regional office and also due to other managerial decisions said advertisement of recruitment was cancelled. It is also denied that workman had worked during the period from 3-5-2004 to 31-8-2010 and again 6-9-2010 to 31-5-2011. That as already stated hereinabove, party No. 2 was never employed by the 1<sup>st</sup> party either permanently or on a temporary basic. He was engaged as a daily wager depending upon the availability of work. Therefore the question of not providing any work from June 2011, and giving letter for restraining to him as contended

by him, does not arise at all. It is submitted that due to non availability of work he was discontinued as a daily wager on and from 31-5-2011. Again it is denied that workman rendered continuous service for more than 7 to 8 years. Other adverse contentions in para No. 6 are not true and correct hence denied by the 1<sup>st</sup> party bank. The circular published by union namely Central bank of India Association Pune as stated by workman is not binding on the 1<sup>st</sup> party. It is not true that as workman has acquired the status of permanency by deeming fiction of law due to his continuous service and employer bank was bound by law to regularize the services of workman from the date of appointment. It is submitted that 2<sup>nd</sup> party was always working at the aforesaid branch on daily wages. He was given to understand in specific terms that he would be paid wages for each days work and that he will not be entitled for permanency or regularization in the employment of the bank. Therefore his employment in the bank used to commence on each day on which work was provide to him and it used to come to an end the same day, at the end of working hours of said branch. Therefore even otherwise, the 2<sup>nd</sup> party cannot refer to the total number of days of work, he had actually worked with the 1<sup>st</sup> party to claim permanency. The employees mentioned in para No. 7 are regular employee of the bank and their appointment were done as per rules and regulations. It is denied that they were junior to the 2<sup>nd</sup> party and that they have been continued in service of the bank. It is not true and correct that employer bank discriminated the workman though he was entitled and eligible to seek the benefits of regularization taking into consideration his long spell service as PTSK. The contentions of the workman in said para are not true and correct hence denied by 1<sup>st</sup> party. In so far as the case of Shri Tagad is concerned it is humbly submitted that the stands appointed in the bank service as sub-staff. However his appointment has nothing to do with his working on daily wages, if any in the past. Shri Tagad was appointed as per rules and regulations. The contentions regarding his appointment are false hence not admitted by the bank. As mentioned earlier recruitment was cancelled due to before mentioned reasons. It is denied for want of knowledge that the 2<sup>nd</sup> party had enrolled himself in the office of the employment exchange.

8. The educational qualifications of the workman are a matter of record and he may kindly be put to strict documentary proof in support of his educational qualifications. Other adverse contentions in both para are not true and correct hence denied by the 1<sup>st</sup> party bank. Although workman worked intermittently over a period of time, he never raised any grievance whatsoever about the wages offered to him by the bank. At this stage, by way of an after thought, he is alleging that he was not paid wages for Sunday, weekly off and government holidays. The 2<sup>nd</sup> party was a daily wager. This position has been admitted by the workman in his statement of claim in para No.1. Therefore, even otherwise he was not entitled to any wages for the days on which he did not physically work at the aforesaid branch of the bank. The question of 2<sup>nd</sup> party workman showing his willingness to work on holidays, in the circumstance, does not arise at all. It appears that a desperate attempt is being made by the workman to bring his case within the purview of the Industrial Disputes Act, 1947 to claim employment in the bank. However, at the cost of repetition, it is submitted that being a daily wager, the 2<sup>nd</sup> party was never entitled to permanent employment in the bank. Workman was never used by bank as part time safai kamagar. Hence he was not entitled to any benefits of such nature. The contentions in para No.11 are not true and correct also repetitive in nature bank had already replied the same. It is once again specifically denied that the workman was discharged or dismissed or terminated from service by the bank without assigning any reasons. He was a daily wager. He was engaged depending upon the urgency and availability of work. He was engaged afresh on each day. Therefore he was paid wages for the work done by him for that day. He was not even engaged as a temporary employee for a fixed period. Hence it is not required to issue any charge sheet or show cause notice to the workman. It is once again emphatically denied that the workman was discharged or dismissed or terminated from service. He was merely discontinued when the work was not available. It is once again submitted that correspondence made by the 2<sup>nd</sup> party with bank his applications and representations etc. are a matter of record. The other contentions in the paragraph are repetitive in nature. The other contentions are denied by the bank. The prayer made by the workman in para No. 13 is not bonafide and honest. Any of the prayer made by workman can not be accepted for reason mentioned before. Also workman failed to show any prima facie case to grant interim relief and therefore the application for interim relief should be rejected.

9. In this back ground and facts the following issues arose for my determination and findings thereon are as follows-

Sr. No.	Issues	Findings
1.	Whether the application for interim relief is maintainable in law ?	In affirmative.
2.	Whether the 2 <sup>nd</sup> party workman has made out prima facie case for interim relief as claimed for ?	Partly in affirmative.
3.	Whether the 2 <sup>nd</sup> party workman is entitled for interim relief as claimed ?	Partly in affirmative.
4.	What order	As per final order.

**REASONS**

10. I have gone through the entire record, perused application for interim relief, Statement of Claim of 2<sup>nd</sup> party and Written Statement of 1<sup>st</sup> party, documents of the parties, heard Ld. Counsel Mr. A.V.Patil for the 2<sup>nd</sup> party and Ld. Counsel Miss. Kakad for the 1<sup>st</sup> party.

11. The Ld. Counsel Mr. A.V.Patil appearing for the 2<sup>nd</sup> party submitted that 2<sup>nd</sup> party workman has been working with the 1<sup>st</sup> party bank since last several years and he has not been made permanent by the first party bank even he was eligible. The 2<sup>nd</sup> party workman came to be engaged as a Daily Wager 3-5-2004 and he use to discharge the work of permanent nature though he was classified as part time kamgar still he use to discharge work throughout bank working hours. He use to clear cheques of branch office and doing other unskilled work. He use to do the work of local clearing. He use to carry cheques from employer bank to other banks within operational area. He use to do also work of local clearing. Initially he was posted at Shrigonda branch in Shrigonda Taluka and rendered services from 3-5-2004 to 31-9-2010 and from 6-9-2010 to 31-5-2011 continuously. During the period of employment he use to get Rs. 50/- per day by way of wages. The 1<sup>st</sup> party bank paid wages and other service benefits as per circulars issued from time to time. The 1<sup>st</sup> party bank is extracting work from 2<sup>nd</sup> party in low wages. The 1<sup>st</sup> party bank did not provide work from June, 2011 though he used to attend the bank premises from time to time. He was not considered by 1<sup>st</sup> party bank, for permanency, but work done by the 2<sup>nd</sup> party was carried on by casual employee in his place. Such act is done by bank to deprive the work and status and privileges of permanency. The 2<sup>nd</sup> party workman has done work for 4-5 years regularly and recruitment for the post is also cancelled by bank though 2<sup>nd</sup> party workman was eligible and qualified for the said post. Therefore, the workman is suffering irreparable loss and affecting legal rights by restraining workman from resuming duties. The 2<sup>nd</sup> party has got prima facie case for interim relief. The balance of convenience lies in favour of 2<sup>nd</sup> party and therefore 2<sup>nd</sup> party should be granted interim relief.

12. On the contrary, Ld. Counsel Miss. Kakad argued that 2<sup>nd</sup> party was engaged by 1<sup>st</sup> party bank as part time Safai Kamgar on temporary basis on daily wages and he was never made permanent in the employment by 1<sup>st</sup> party. He was engaged by 1<sup>st</sup> party on daily wages at Madhewadgaon branch, Tal- Shrigonda. He was called when work is available. The work assigned to him was depending upon its availability. It is denied that 2<sup>nd</sup> party worked for more than 190 days in each year since appointment. The 2<sup>nd</sup> party never worked for 268 from 6-9-2010 to 31-5-2011 at Shrigonda as against vacant post. The 2<sup>nd</sup> party is not covered by any circular of the 1<sup>st</sup> party. The 2<sup>nd</sup> party was never deprived of by bank from benefits of regularization and demand of 2<sup>nd</sup> party is illegal. The 2<sup>nd</sup> party did not fulfill the condition and therefore his name was not recommended for recruitment, but due to non-availability of work, he was discontinued from daily wages and after 20-7-2011 the circular published by union is not binding on the bank. It is not true that 2<sup>nd</sup> party has acquired status of permanency by deeming fiction of law due to his continuous service and bank was bound by law to regularize the services of 2<sup>nd</sup> party. The 2<sup>nd</sup> party was given understanding that he was given work each day and was not entitled for permanency. It is denied that Shri Ambadas Kashinath Tagad is concerned, it is submitted that he stands appointed in Bank's Service as sub-staff. However, his appointment has nothing to do with his working on daily wages, if any in the past. Shri Tagad was appointed as per rules and regulations. As mentioned earlier the recruitment was cancelled due to before mentioned reason. It is denied for want of knowledge the 2<sup>nd</sup> party workman has enrolled himself in the office of Employment Exchange and he possessed requisite qualification. The 2<sup>nd</sup> party was never used by bank as part-time kamgar. The 2<sup>nd</sup> party was merely discontinued when the work was not available. In facts and circumstances the 2<sup>nd</sup> party workman was not entitled for any relief. Final relief cannot be granted by this Hon'ble Court and therefore application for interim relief should be rejected.

13. The contention of Ld. Counsel Mr. Ashok Patil for 2<sup>nd</sup> party workman that he was working with the 1<sup>st</sup> party bank since last five years regularly on daily wages on part-time post of Safai Kamgar and his regularization was under consideration as per recruitment procedure initiated by bank as he was eligible and fulfilling the criteria to get job as per Circulars issued by bank from time to time and Tripartite settlement. The 1<sup>st</sup> party bank ignoring legal, justified claim of 2<sup>nd</sup> party as per advertisement by giving appointment to Tagad in illegal manner discontinuing services of 2<sup>nd</sup> party even the work of Safai Kamgar was available deliberately to deprive justified and legal claim of 2<sup>nd</sup> party for permanency. The said contention is disputed by Ld. Counsel Miss. Kakad from 1<sup>st</sup> party bank. There appears some substance in the contention of Ld. Counsel Mr. Ashok Patil. From record it appears that 2<sup>nd</sup> party was working as Daily Wager with the 1<sup>st</sup> party since last five years i.e. from 3- 5-2004 regularly and continuously on daily wage and worked for more than 190 days in each and every year. The 2<sup>nd</sup> party workman was doing the work of permanent nature throughout bank hours. He used to carry cheques from employer bank to other banks in operational area. He used to do the work of local clearing. He was posted at Pimpalgaon Pisa branch and rendered services during the period from 3-5-2004 to 31-9-2010 and 6-9-2010 to 31-5-2011 continuously and he used to get Rs. 50/- per day wages. The 1<sup>st</sup> party bank has extracted the work from 2<sup>nd</sup> party on low wages. Record shows that 2<sup>nd</sup> party was not provided work by 1<sup>st</sup> party bank from July 2011 deliberately to deprive him from status and privileges of permanency and the work performed by 2<sup>nd</sup> party was got done through casual employees. Record shows that the recruitment for the post of Safai Kamgar was also cancelled by the 1<sup>st</sup> party without assigning any reasons. The 2<sup>nd</sup> party belongs to Employment

Exchange and he has passed 9<sup>th</sup> Std. and was eligible for the post of Safai Kamgar. The 2<sup>nd</sup> party has applied for the post of Safai Kamgar as per advertisement on 31-3-2013 Exh. U-4/1. The 2<sup>nd</sup> party has also been given certificate by bank on 31-1-2013 that Abasaheb Annasaheb Kale has worked in the pkac, in the absence of Safai Karmachari/Sub-Staff for 268 days during year 2010-2011 Pimpalgaon Pisa branch. We confirmed that certificate has been issued to member after duly verifying record of branch i.e. Exh. U-4/4. The document Exh. U-4/4 i.e. certificate dt. 1-12-2011 shows that as Safai Kamgar is not posted to branch sweeping / cleaning of premises is got done daily from various local persons on daily wage payment. As per record Abasaheb Kale date of birth is 10-4-1982 and present age is 30 years . It is learnt that conduct of Abasaheb Kale is good and hard worker. Such information is given to Regional Officer, A.nagar by Branch Manager regarding working period and character of employee Abasaheb Kale. There is circular of bank dt. 16-9-200 and dt. 2-7-2001 Exh. U-6 issued by Central Bank to all branches for utilizing Safai Karmachai on temporary basis for 60 days in a year Exh. U-5/6, circular of August 2002 issued to all branches for engaging temporary / casual workers in leave vacancies for 60 days in a year Exh. U-5/9 as per VII Bipartite Settlement. There was advertisement dt. 14<sup>th</sup> Nov. 2011 Exh. U/5/10 issued by bank for recruitment of Safai Karmamchari-cum-Sub-staff. As 2<sup>nd</sup> party was eligible for the post of Safai Kamgar as per advertisement and as he had fulfilled all conditions of advertisement of Nov. 2014 and 11-2-2013 and dt. dt. 14<sup>th</sup> Nov. 2011 Exh. U-4/12 and circular , he is entitled for the post of Safai Kamgar. The advertisement was also published in local newspaper 'Sakal' and 'Lokmat' Exh. U-5/11. It is surprising that 1<sup>st</sup> party had cancelled the recruitment even there were vacancies of Safai Karmachari/sub-staff as not to get the employment to the 2<sup>nd</sup> party on the post of Safai Kamgar and even he was eligible for the post. On the contrary, the record shows that 1<sup>st</sup> party had given appointment to Tagad on the post of part time Safai Kamgar on probation of 6 months at Mandavgaon branch on the basic of Rs. 143.33 + DA 209 with H.R.A. even though he was junior to 2<sup>nd</sup> party workman as per memorandum of settlement Exh. U-6. Thus, from record it appears that 1<sup>st</sup> party had deliberately and intentionally discontinued the services of 2<sup>nd</sup> party workman by not providing work even the work of Safai Karmachari was available. Even the circular issued by the bank was binding on the 1<sup>st</sup> party bank and advertisement was published in newspaper 'Lokmat' and 'Sakal' calling applications from the candidates for the post of Safai Kamgar, recruitment was cancelled and appointment was given to a person namely Tagad who was not deserving for appointment on the post of Safai Kamgar in illegal manner. 2<sup>nd</sup> party has been deliberately and intentionally not provided the work even the work was available as he has requested to the bank for making him permanent in the 1<sup>st</sup> party bank, but high handedly discontinued the services of 2<sup>nd</sup> party workman on the ground that work is not available which is totally false i.e. Exh. U- 4/9 and Exh. U-4/10. It cannot be said that 2<sup>nd</sup> party has no right to claim interim relief. From the attitude of the 1<sup>st</sup> party bank, it is clearly established that the bank wants to get the work done of Safai Kamgar through casual worker on low wages to deprive 2<sup>nd</sup> party from getting permanency on the post of Safai Kamgar flouting their own circulars and therefore for the said reason 1<sup>st</sup> party bank may have cancelled the recruitment of Safai Kamgar to be made on permanent basis. Therefore, in facts and circumstances the 2<sup>nd</sup> party workman deserves for interim relief.

14. In the result I pass following interim Award-

#### INTERIM AWARD

1. Application for interim relief is allowed.
2. First Party bank shall allow the 2<sup>nd</sup> party workman to work in the 1<sup>st</sup> party bank and pay him wages as per VII Bipartite Settlement till disposal of Reference.
3. The Reference shall proceed expeditiously on merits.
4. Copy of Interim Award be sent to Dy. Chief Labour Commissioner (Central), Mumbai for publication.

Ahmednagar

Date:- 28-04-2016

P. W. BHUYAR, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2282.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय, अहमदनगर के पंचाट (संदर्भ सं. 14/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-12012/05/2016-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2282.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2015) of the Industrial Tribunal, Ahmednagar as shown in the Annexure in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 16.11.2016.

[No. L-12012/05/2016-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE**

**BEFORE SHRI P. W. BHUYAR, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,  
MAHARASHTRA AT : AHMEDNAGAR**

**REFERENCE (IT) NO. 14 OF 2015**

**BETWEEN :**

The Regional Manager,  
Central Bank of India,  
R.O. MIDC, Navnagapur,  
Ahmednagar

...First Party

**And**

Shri Bhishekkumar Patil,  
Post- Madhewadgaon,  
Tal- Shrigonda,  
Dist- Ahmednagar

...Second Party

**INTERIM AWARD BELOW Exh. U-3**

**(Delivered on 28-04-2016)**

1. The Deputy Chief Labour Commissioner (Central), Mumbai has made a Reference u/s- 10 (1) r/w- Items- 12 (5) of the Industrial Disputes Act, 1947 for adjudication of the dispute between second party workman and 1<sup>st</sup> party bank.
2. It is the contentions of the 2<sup>nd</sup> party workman was came to be engaged as a part-time safai kamgar from 8-1-2007 and he used to discharge the work of permanent nature and duration. Though he was classified as a PTSK still he use to discharge the work through out the bank working hours. He use to clean the premises of the branch office, toilets, and other unskilled work connected thereto. He also use to carry the cheques from employer bank to other bank within its operational area. He also use to discharge the work of local clearing. Initially he was posted at Shrigonda branch in Shrigonda Tal and he has rendered a continuous service from 8-1-2007 to 30-9-2008 and 7-7-2010 to 19-7-2011. It is further submitted that during the period of his employment the workman use to get only Rs. 40/- by way of wages. The workman further state and submit that the employer bank never extended the benefits of permanency/regularization etc. to the workman though he has rendered more than 4 to 5 years of service. It is also submitted that the workman discharged the work of permanent duration and permanent nature during the period of his employment. It is also pertinent to note that the bank did not extend the benefits of wages and other service benefits as per circulars issued from time to time to that effect. Needless to say the work of workman is extracted by the bank keeping him on very low wages. It is further submitted that the workman deserves a relief of regularization and permanency.
3. The workman further submit that from July 2011 the employer bank did not provide any work to him through he use to attend the bank premises from time to time. His request was not considered by the bank and the work which was performed by the workman was carried on by appointing another casual employee in his place. The said act is done by the employer just to deprive the workman from status and benefits of permanency. The workman has rendered a service for about 4 to 5 years and the recruitment for the said post is also cancelled by the employer bank though the workman was eligible and qualified for the said post. The workman is suffering irreparable loss and injury due to illegal acts committed by the employer bank and by restraining the workman from resuming on duty. The workman has a good prima facie and balance of convenience also lies in his favour and therefore prayed for allowed to 2<sup>nd</sup> party workman to resume on duty and earn the wages as per rules.
4. The 2<sup>nd</sup> party workman filed the documents below Exh. U-5 documents are xerox copy of application given by 2<sup>nd</sup> party to first party dated 31-1-2013, xerox copy of letter given by Shrigonda branch to regional office dated 1-12-2011, Xerox copy of office circular dated 4-10- 1990, xerox copy of circular letter dated 16-9-2000, xerox copy of circular letter to all branches dated 2-7-2001, xerox copy of letter dated 17-8-2002, xerox copy of letter given by pune

branch dated 14-11-2011, xerox copy of letter of regional office dated 12-11-2011, xerox copy of circular dated 20-8-2012, xerox copy of advertise about recruitment, xerox copy of paper advertisement dated 25-1-2013 xerox copy of paper advertisement. Vide Exh U-6 documents are xerox copy of memorandum of settlement dated 7-1-1999.

5. The 1<sup>st</sup> party filed their written statement vide Exh.C-3. It is the contentions of the 1<sup>st</sup> party contents in para 1 of the statement of claim filed by workman are not true and correct and same are not admitted by the bank. However it is true that 2<sup>nd</sup> party was engaged as a daily wager by 1<sup>st</sup> party. The 2<sup>nd</sup> party was never in the permanent employment of 1<sup>st</sup> party. He was engaged by the 1<sup>st</sup> party on daily wages at Madhewadgaon branch. No particular work was assigned to the 2<sup>nd</sup> party. He was called when and whenever required by the 1<sup>st</sup> party for doing particular work for specific time only and he was paid wages as per rules and regulations made by the management of first party in that regard. The work assigned to him was depended upon the availability at that particular time. The first party craves the leave of the Hon'ble court to produce the necessary documents before it at the appropriate stage in the matter of wages to the 2<sup>nd</sup> party. The 1<sup>st</sup> party had never replaced 2<sup>nd</sup> party on the vacant post. It is strongly objected and denied by the first party that 2<sup>nd</sup> party was constrained and denied by the 1<sup>st</sup> party that 2<sup>nd</sup> party was constrained to work on holidays and beyond normal working hours. These statements of the 2<sup>nd</sup> party are imaginary, illusionary and bogus. It is not correct that 2<sup>nd</sup> party rendered a continuous service from 8-1-2007 to 30-9-2008 and 7-7-2010 to 19-7-2011. The all other contents in para 2 of the statement of claim are denied by 1<sup>st</sup> party. The all other contents in para 2 of the statement of claim are denied by 1<sup>st</sup> party. The manager or no one in the bank had never assure 2<sup>nd</sup> party permanency and regularization of employment. The vacant post of the bank was filled by as per rules made in that regard. The appointment of MR. Kothambire was carried out as per rules and regulations, dispute created by the workman in that regard is false. It is not true that workman has discharged any clerical work in addition to the work of sweeping. It is absolutely false and specifically denied by the 1<sup>st</sup> party that the work assigned to the workman was of permanent duration and continuous nature and workman has rendered continuous service and each year of service he worked more than 190 days. Workman was working on daily wages. His nature of work and duration of it was depended upon the availability of work. Hence it was no necessary to avail benefits of permanent employee to workman. The contents in para No. 3 are not true and correct and specifically denied by the 1<sup>st</sup> party. Workman never worked for about 6-8 days from 8-1-2007 to 30-9-2008 and for about 377 days from 7-7-2010 to 19-7-2011 at Madhewadgaon branch as against vacant post. He never worked continuously for about 985 days. That in so far as the actual period for which the party No. 2 has worked on daily wages, all other adverse allegations not specifically replied to are hereby denied.

6. The contents in para 4 are not true and correct. The bank denied same. It is true that Management of bank has issued several circulars. Party No. 2 workman was never employed by the part No. 1 bank either permanently or on a temporary basic. He was engaged as a daily wager depending upon the availability of work. Hence provisions mentioned in those circulars did not apply to him. The contention of the workman in para No. 4 that it is pertinent to note that the workman posted at the relevant branches of the bank use to discharge the work of permanent nature regularly and through out banking hours, that by itself indicates that the workman is eligible and entitled for the claim of regularizations, is true and correct. It is submitted that party No. 2 was always working at the aforesaid branch on daily wages. He was given to understand in specific terms that he would be paid wages for each days work and that he will not be entitled for permanency or regularization in the employment of the bank. Therefore his employment in the bank used to commence on each day on which work was provide to him and it used to come to an end, the same day at the end of the working hours of the said branch. All other contentions in para No. 4 are repetitive in nature, the bank had already denied it. All other adverse allegations are denied by bank.

7. The contents in para No. 5 are not true and correct and specifically denied by the 1<sup>st</sup> party. Workman was engaged by 1<sup>st</sup> party on daily wages. He was never P.T.S.K. sub staff of the bank. It is not true that workman was deprived from the benefit of regularization. The contentions of workman in this para are exaggerative in nature. The 2<sup>nd</sup> party was never employed by the 1<sup>st</sup> party either permanently or on a temporary basic. He was engaged as a daily wager depending upon the availability of work. Therefore demand of workman is itself unlawful. Hence there were no question of unfair labour practice by the 1<sup>st</sup> party. The circular dated 14-11-2011 issued by regional office, pune was only to gather information of temporary workers who have worked in the branches of the 1<sup>st</sup> party. Nowhere it was mentioned in that circular that they will be recruited by the 1<sup>st</sup> party. Therefore contentions made by the 2<sup>nd</sup> party in para No. 6 were not true and correct. It is also not true and correct that workman has fulfilled all those conditions and the managers of the respective branches also recommended the name of the workman for said recruitment. It is absolutely false that workman was already in the employment of employer bank. Advertisement in respect of recruitment on 11-2-2013 by Ahmednagar regional office was cancelled by the central office. The A.nagar regional office is merged into Aurangabad regional office and also due to other managerial decisions said advertisement of recruitment was cancelled. It is also denied that workman had worked during the period from 8-1-2007 to 30-9-2008 and 7-7-2010 to 19-7-2011. That as already stated hereinabove, party No. 2 was never employed by the 1<sup>st</sup> party either permanently or on a temporary basic. He was engaged as a daily wager depending upon the availability of work. Therefore the question of not providing any work from 20-7-2011, and giving letter for restraining to him as contended by him, does not arise at all. It is submitted that due to non-availability of work he was discontinued as a daily wager

on and from 20-7-2011. Again it is denied that workman rendered continuous service for more than 4 to 5 years. Other adverse contentions in para No. 6 are not true and correct hence denied by the 1<sup>st</sup> party bank. The circular published by union namely Central bank of India Association Pune as stated by workman is not binding on the 1<sup>st</sup> party. It is not true that as workman has acquired the status of permanency by deeming fiction of law due to his continuous service and employer bank was bound by law to regularize the services of workman from the date of appointment. It is submitted that 2<sup>nd</sup> party was always working at the aforesaid branch on daily wages. He was given to understand in specific terms that he would be paid wages for each days work and that he will not be entitled for permanency or regularization in the employment of the bank. Therefore his employment in the bank used to commence on each day on which work was provide to him and it used to come to an end the same day, at the end of working hours of said branch. Therefore even otherwise, the 2<sup>nd</sup> party cannot refer to the total number of days of work, he had actually worked with the 1<sup>st</sup> party to claim permanency. The employees mentioned in para No. 7 are regular employee of the bank and their appointment were done as per rules and regulations. It is denied that they were junior to the 2<sup>nd</sup> party and that they have been continued in service of the bank. It is not true and correct that employer bank discriminated the workman though he was entitled and eligible to seek the benefits of regularization taking into consideration his long spell service as PTSK. The contentions of the workman in said para are not true and correct hence denied by 1<sup>st</sup> party. In so far as the case of Shri Tagad is concerned it is humbly submitted that the stands appointed in the bank service as sub-staff. However his appointment has nothing to do with his working on daily wages, if any in the past. Shri Tagad was appointed as per rules and regulations. The contentions regarding his appointment are false hence not admitted by the bank. As mentioned earlier recruitment was cancelled due to before mentioned reasons. It is denied for want of knowledge that the 2<sup>nd</sup> party had enrolled himself in the office of the employment exchange.

8. The educational qualifications of the workman are a matter of record and he may kindly be put to strict documentary proof in support of his educational qualifications. Other adverse contentions in both para are not true and correct hence denied by the 1<sup>st</sup> party bank. Although workman worked intermittently over a period of time, he never raised any grievance whatsoever about the wages offered to him by the bank. At this stage, by way of an after thought, he is alleging that he was not paid wages for Sunday, weekly off and government holidays. The 2<sup>nd</sup> party was a daily wager. This position has been admitted by the workman in his statement of claim in para No.1. Therefore, even otherwise he was not entitled to any wages for the days on which he did not physically work at the aforesaid branch of the bank. The question of 2<sup>nd</sup> party workman showing his willingness to work on holidays, in the circumstance, does not arise at all. It appears that a desperate attempt is being made by the workman to bring his case within the purview of the Industrial Disputes Act, 1947 to claim employment in the bank. However, at the cost of repetition, it is submitted that being a daily wager, the 2<sup>nd</sup> party was never entitled to permanent employment in the bank. Workman was never used by bank as part-time safai kamagar. Hence he was not entitled to any benefits of such nature. The contentions in para No.11 are not true and correct also repetitive in nature bank had already replied the same. It is once again specifically denied that the workman was discharged or dismissed or terminated from service by the bank without assigning any reasons. He was a daily wager. He was engaged depending upon the urgency and availability of work. He was engaged afresh on each day. Therefore he was paid wages for the work done by him for that day. He was not even engaged as a temporary employee for a fixed period. Hence it is not required to issue any charge sheet or show-cause notice to the workman. It is once again emphatically denied that the workman was discharged or dismissed or terminated from service. He was merely discontinued when the work was not available. It is once again submitted that correspondence made by the 2<sup>nd</sup> party with bank his applications and representations etc. are a matter of record. The other contentions in the paragraph are repetitive in nature. The other contentions are denied by the bank. The prayer made by the workman in para No. 13 is not bonafide and honest. Any of the prayer made by workman can not be accepted for reason mentioned before. Also workman failed to show any prima facie case to grant interim relief and therefore the application for interim relief should be rejected.

9. In this back ground and facts the following issues arose for my determination and findings thereon are as follows-

Sr.No.	Issues	Findings
1.	Whether the application for interim relief is maintainable in law ?	In affirmative.
2.	Whether the 2 <sup>nd</sup> party workman has made out prima facie case for interim relief as claimed for ?	Partly in affirmative.
3.	Whether the 2 <sup>nd</sup> party workman is entitled for interim relief as claimed ?	Partly in affirmative.
4.	What order	As per final order.

## REASONS

10. I have gone through the entire record, perused application for interim relief, Statement of Claim of 2<sup>nd</sup> party and Written Statement of 1<sup>st</sup> party, documents of the parties, heard Ld. Counsel Mr. A.V.Patil for the 2<sup>nd</sup> party and Ld. Counsel Miss. Kakad for the 1<sup>st</sup> party.

11. The Ld. Counsel Mr. A.V.Patil appearing for the 2<sup>nd</sup> party submitted that 2<sup>nd</sup> party workman has been working with the 1<sup>st</sup> party bank since last several years and he has not been made permanent by the first party bank even he was eligible. The 2<sup>nd</sup> party workman came to be engaged as a Safai Kamgar from 8-1-2007 and he use to discharge the work of permanent nature though he was classified as part-time kamgar still he use to discharge work throughout bank working hours. He use to clear cheques of branch office and doing other unskilled work. He use to do the work of local clearing. He use to carry cheques from employer bank to other banks within operational area. He use to do also work of local clearing. Initially he was posted at Shrigonda branch in Shrigonda Taluka and rendered services from 8-1-2007 to 30-9-2008 and from 7-7-2010 to 19-2-2011 continuously. During the period of employment he use to get Rs. 40/- per day by way of wages. The 1<sup>st</sup> party bank paid wages and other service benefits as per circulars issued from time to time. The 1<sup>st</sup> party bank is extracting work from 2<sup>nd</sup> party in low wages. The 1<sup>st</sup> party bank did not provide work from July, 2011 though he used to attend the bank premises from time to time. He was not considered by 1<sup>st</sup> party bank, for permanency, but work done by the 2<sup>nd</sup> party was carried on by casual employee in his place. Such act is done by bank to deprive the work and status and privileges of permanency. The 2<sup>nd</sup> party workman has done work for 4-5 years regularly and recruitment for the post is also cancelled by bank though 2<sup>nd</sup> party workman was eligible and qualified for the said post. Therefore, the workman is suffering irreparable loss and affecting legal rights by restraining workman from resuming duties. The 2<sup>nd</sup> party has got prima facie case for interim relief. The balance of convenience lies in favour of 2<sup>nd</sup> party and therefore 2<sup>nd</sup> party should be granted interim relief.

12. On the contrary, Ld. Counsel Miss. Kakad argued that 2<sup>nd</sup> party was engaged by 1<sup>st</sup> party bank as part time Safai Kamgar on temporary basis on daily wages and he was never made permanent in the employment by 1<sup>st</sup> party. He was engaged by 1<sup>st</sup> party on daily wages at Madhewadgaon branch, Tal- Shrigonda. He was called when work is available. The work assigned to him was depending upon its availability. It is denied that 2<sup>nd</sup> party worked for more than 190 days in each year since appointment. The 2<sup>nd</sup> party never worked for 608 from 8-1-2007 to 30-9-2008 and for about 377 days from 7-7-2010 to 19-7-2011 at Madhewadgaon as against vacant post. The 2<sup>nd</sup> party never worked for 985 days continuously. The 2<sup>nd</sup> party is not covered by any circular of the 1<sup>st</sup> party. The 2<sup>nd</sup> party was never deprived of by bank from benefits of regularization and demand of 2<sup>nd</sup> party is illegal. The 2<sup>nd</sup> party did not fulfill the condition and therefore his name was not recommended for recruitment, but due to non-availability of work, he was discontinued from daily wages and after 20-7-2011 the circular published by union is not binding on the bank. It is not true that 2<sup>nd</sup> party has acquired status of permanency by deeming fiction of law due to his continuous service and bank was bound by law to regularize the services of 2<sup>nd</sup> party. The 2<sup>nd</sup> party was given understanding that he was given work each day and was not entitled for permanency. It is denied that Shri Ambadas Kashinath Tagad is concerned, it is submitted that he stands appointed in Bank's Service as sub-staff. However, his appointment has nothing to do with his working on daily wages, if any in the past. Shri Tagad was appointed as per rules and regulations. As mentioned earlier the recruitment was cancelled due to before mentioned reason. It is denied for want of knowledge the 2<sup>nd</sup> party workman has enrolled himself in the office of Employment Exchange and he possessed requisite qualification. The 2<sup>nd</sup> party was never used by bank as part-time kamgar. The 2<sup>nd</sup> party was merely discontinued when the work was not available. In facts and circumstances the 2<sup>nd</sup> party workman was not entitled for any relief. Final relief cannot be granted by this Hon'ble Court and therefore application for interim relief should be rejected.

13. The contention of Ld. Counsel Mr. Ashok Patil for 2<sup>nd</sup> party workman that he was working with the 1<sup>st</sup> party bank since last five years regularly on daily wages on part-time post of Safai Kamgar and his regularization was under consideration as per recruitment procedure initiated by bank as he was eligible and fulfilling the criteria to get job as per Circulars issued by bank from time to time and Tripartite settlement. The 1<sup>st</sup> party bank ignoring legal, justified claim of 2<sup>nd</sup> party as per advertisement by giving appointment to Tagad in illegal manner discontinuing services of 2<sup>nd</sup> party even the work of Safai Kamgar was available deliberately to deprive justified and legal claim of 2<sup>nd</sup> party for permanency. The said contention is disputed by Ld. Counsel Miss. Kakad from 1<sup>st</sup> party bank. There appears some substance in the contention of Ld. Counsel Mr. Ashok Patil. From record it appears that 2<sup>nd</sup> party was working as Safai Kamgar with the 1<sup>st</sup> party since last five years i.e. from 8-1-2007 regularly and continuously on daily wage and worked for more than 190 days in each and every year. The 2<sup>nd</sup> party workman was doing the work of permanent nature throughout bank hours. He used to carry cheques from employer bank to other banks in operational area. He used to do the work of local clearing. He was posted at Shrigonda branch and rendered services during the period from 8-1-2007 to 30-9-2008 and 7-7-2010 to 19-2-2010 continuously and he used to get Rs. 40/- per day wages. The 1<sup>st</sup> party bank has extracted the work from 2<sup>nd</sup> party on low wages. Record shows that 2<sup>nd</sup> party was not provided work by 1<sup>st</sup> party bank from July 2011 deliberately to deprive him from status and privileges of permanency and the work performed by 2<sup>nd</sup> party was got done through casual employees. Record shows that the recruitment for the post of Safai Kamgar was also cancelled by the 1<sup>st</sup> party without assigning any reasons. The 2<sup>nd</sup> party belongs to Employment Exchange and he has passed 10<sup>th</sup> Std. and was eligible for the post of Safai Kamgar. The 2<sup>nd</sup> party has applied for the post of Safai

Kamgar as per advertisement on 31-3-2013 Exh. U-51. The 2<sup>nd</sup> party has also been given certificate by bank on 31-1-2013 that Abhishek Ambar Patil has worked in the absence of Safai Karmachari for 98 and 92 days during year 2010-2011 respectively at Madhewadgaon branch. We confirmed that certificate has been issued to member after duly verifying record of branch i.e. Exh. U-5/4. The document Exh. U-5/5 i.e. certificate dt. 1-12-2011 shows that as Safai Kamgar is not posted to branch sweeping / cleaning of premises is got done daily from various local persons on daily wage payment. As per record Abhishek Patil date of birth is 24-6-1988 and present age is 25 years. The period of working in branch is July, 2010 to May, 2011, total number of days of 190 details ( July, 2010- 22 days, August, 2010- 16 days, September, 2010- 30 days, November, 2010-30 days, March, 2011-31 days, April, 2011-31 days and May, 2011-30 days.) It is learnt that conduct of Abhishek Patil is good and hard worker. Such information is given to Regional Officer, A.nagar by Branch Manager regarding working period and character of employee Abhishek Patil. There is circular of bank dt. 2-7-2001 Exh. U-6, issued by Central Bank to all branches for utilizing Safai Karmachai on temporary basis for 60 days in a year Exh. U-5/6, circular of August 2002 issued to all branches for engaging temporary / casual workers in leave vacancies for 60 days in a year Exh. U-5/9 as per VII Bipartite Settlement. There was advertisement dt. 14<sup>th</sup> Nov. 2011 Exh. U-5/10 issued by bank for recruitment of Safai Karmamchhari cum Sub-staff. As 2<sup>nd</sup> party was eligible for the post of Safai Kamgar as per advertisement and as he had fulfilled all conditions of advertisement of Nov. 2014 and 11-2-2013 Exh. U-5/13, he is entitled for the post of Safai Kamgar. The advertisement was also published in local newspaper 'Sakal' and 'Lokmat' Exh. U-5/11. It is surprising that 1<sup>st</sup> party had cancelled the recruitment even there were vacancies of Safai Karmachari/ sub-staff as not to get the employment to the 2<sup>nd</sup> party on the post of Safai Kamgar even he was eligible for the post. On the contrary, the record shows that 1<sup>st</sup> party had given appointment to Tagad on the post of part time Safai Kamgar on probation of 6 months at Mandavgaon branch on the basic of Rs. 143.33 + DA 209 with H.R.A. though he was junior to 2<sup>nd</sup> party workman as per memorandum of settlement Exh. U-6. Thus, from record it appears that 1<sup>st</sup> party had deliberately and intentionally discontinued the services of 2<sup>nd</sup> party workman by not providing work even the work of Safai Karmachari was available. Even the circular issued by the bank was binding on the 1<sup>st</sup> party bank and advertisement was published in newspaper 'Lokmat' and 'Sakal' calling applications from the candidates for the post of Safai Kamgar, recruitment was cancelled and appointment was given to a person namely Tagad who was not deserving for appointment on the post of Safai Kamgar in illegal manner. 2<sup>nd</sup> party has been deliberately and intentionally not provided the work even the work was available as he has requested to the bank for making him permanent in the 1<sup>st</sup> party bank as the work was available, but high handedly discontinued the services of 2<sup>nd</sup> party workman on the ground that work is not available which is totally false. It cannot be said that 2<sup>nd</sup> party has no right to claim interim relief. From the attitude of the 1<sup>st</sup> party bank it is clearly established that the bank wants to get the work done of Safai Kamgar through casual worker on low wages to deprive 2<sup>nd</sup> party from getting permanency on the post of Safai Kamgar flouting their own circular and therefore for the said reason 1<sup>st</sup> party bank may have cancelled the recruitment on of Safai Kamgar permanent basis. Therefore, in facts and circumstances the 2<sup>nd</sup> party workman deserves for interim relief.

14. In the result I pass following interim Award-

#### INTERIM AWARD

1. Application for interim relief is allowed.
2. First Party bank shall allow the 2<sup>nd</sup> party workman to work in the 1<sup>st</sup> party bank and pay him wages as per VII Bipartite Settlement till disposal of Reference.
3. The Reference shall proceed expeditiously on merits.
4. Copy of Interim Award be sent to Dy. Chief Labour Commissioner (Central), Mumbai for publication.

Ahmednagar

Date:- 28-04-2016

P. W. BHUYAR, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2283.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एंड सिंध बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ सं. 211/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-12012/21/2011-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2283.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 211/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of Punjab & Sind Bank, Zonal Office and their workmen, received by the Central Government on 16.11.2016.

[No. L-12012/21/2011-IR (B-II)]

RAVI KUMAR, Desk Officer

### ANNEXURE

### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

**Case No. I.D. No. 211/2011**

Registered on 3.8.2011

Sh. Harbhajan Singh, S/o Sh. Shangara Singh,  
R/o House No.2, Gali No.1, Colony Inderpuri,  
Kat Khalra, Post Office, Khalsa College, Amritsar

...Petitioner

### Versus

1. Zonal Manager-II, Punjab and Sind Bank,  
Zonal Office, Amritsar.
2. Branch Manager, Punjab and Sind Bank,  
Branch Bal Kalan Naushara, Amritsar

...Respondent

### APPEARANCES

For the workman : Sh. R.P. Rana, Adv.  
For the Management : Sh. J.S. Sathi, Adv.

### AWARD

Passed on:-26.05.2016

Vide Order No.L-12012/21/2011-IR(B-II), dated 18.07.2011 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of the Zonal Manager, Punjab & Sind Bank, Zonal Office, Amritsar in terminating the services of Sh. Harbhajan Singh S/o Sh. Shangara Singh, Ex-Peon(Daily wage basis) w.e.f. 2.2.2002 without any notice and without any payment of retrenchment compensation is just, valid and legal? What relief the concerned workman is entitled to?”

In response to the notice, the workman appeared and submitted statement of claim, pleading that he was engaged as temporary Peon in the year 1994 by the respondent-management and was posted at Khalsa College, Chheharta, Amritsar. The workman was transferred to several branches and he lastly worked as temporary Peon from 10.12.1999 to 1.2.2002 at Bal Kalan, Naushara Majitha Road, Amritsar. His services were terminated on 2.2.2002 without serving any notice and without paying him any retrenchment compensation. That the persons junior to him were retained in service and in these circumstances, the termination of his services is illegal.

Respondent-management filed written statement and pleaded that engagement of temporary Peons in different branches amounts to fresh engagement and the services rendered in different branches cannot be clubbed to count to the length of service. That temporary Peons were engaged to meet the exigency. The workman cannot claim regularization of service when he was engaged intermittently without following any procedure. That no person junior to the workman was retained in service and the workman is not entitled to any relief as he raised the dispute after a lapse of more than 8 years.

Parties were given opportunity to lead the evidence.

Sh. Harbhajan Singh, workman has appeared in the witness-box and filed his affidavit reiterating his case as set out in the claim petition.

On the other hand, respondent-management has examined Sh. Balkar Singh, who filed his affidavit and reiterating the stand of the respondent-bank.

I have heard Sh. R.P. Rana for the workman and Sh. J.S. Sathi for the management and perused the file carefully.

The workman has specifically pleaded that he worked as temporary Peon from 10.12.1999 to 1.2.2002 in Branch Bal Kalan, Naushara Majitha Road Amritsar and his services were terminated on 2.2.2002 without payment of any retrenchment compensation or service of notice. The respondent-management did not controvert the assertions made by the workman and simply pleaded that payment vouchers are not available with the respondent-bank, meaning thereby the respondent-bank admits that the workman worked with the respondent-bank continuously.

Sh. Balkar Singh has been examined by the respondent-bank who admitted in his cross-examination that the workman worked in Bal Kalan Branch from December 1999 to February 2002. Thus his statement further clinches the matter that the workman continuously worked with the respondent-bank in one of its branch continuously from 10.12.1999 to 1.2.2002 and thereby he rendered more than 240 days of service continuously in a calendar year prior to the termination of his services on 1.2.2002.

It is the admitted case that no notice was served to the workman prior to the termination of his services and he was not paid any retrenchment compensation.

In these circumstances, the termination of the services of the workman being in violation of Section 25-F of the Industrial Disputes Act, 1947.

Primary objections were taken that the reference being filed after a lapse of 8 years is time barred. It is suffice to say that the respondent-management filed Writ Petition No.17770 of 2012 on the same averments and the Hon'ble High Court dismissed the writ petition holding that the delay in the facts of the present case cannot be taken as fatal.

Being so, the relief to the workman cannot be declined on the grounds of delay.

It is an admitted case that some persons appointed as temporary Peons along with the workman were terminated and the workmen were ordered to be reinstated but without back wages vide order dated 26.5.2010 passed by the Hon'ble High Court in Civil Writ Petition No.18154 of 2007 title Baljit Singh Vs. Presiding Officer and others. It is not denied by the learned counsel for the management that the case of the workman is also similarly placed as those of the workmen who were reinstated with the orders of the Hon'ble High Court but without back wages.

Being so it is held that the action of the respondent-management in terminating the services of the workman w.e.f. 2.2.2002 is not legal and the workman is entitled to reinstatement with continuity of service but without back wages on the same terms and conditions on which he was working at the time of his termination of his services. The respondent-management is directed to take him in service within one month from the publication of the award. The reference is accordingly answered in favour of the workman.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2284.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ सं. 50/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-12012/35/2009-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2284.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2009) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 16.11.2016.

[No. L-12012/35/2009-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT - II, ROOM NO. 33,  
BLOCK-A,GROUND FLOOR, KARKARDOOMA COURT COMPLEX,  
KARKARDOOMA, DELHI 110 032****Present:-** Shri Harbansh Kumar Saxena**ID. No. 50/09**

Shri Ram Babu,  
S/o Todi Singh,  
865, Kothiyat, Chandpur Road,  
Bulandshahr (UP)

... Workman

**Versus**

The Regional Manager,  
Punjab National Bank,  
Regional Office, Teachers Colony

... Management

**NO DISPUTE AWARD**

The Central Government in the Ministry of Labour vide Letter No.L-12012/35/2009(IR(B-II) dated 18.08.2009 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of Punjab National Bank in terminating the service of Shri. Ram Babu Clerk cum Cashier Kutubpur Branch by way of imposing the penalty of compulsory retirement w.e.f. 24.01.2003 on the alleged charges of misconduct leveled against him vide charge sheet No. RMB, HRD . RB dated 5.5.2001 is legal and justified? To what relief the concern workman is entitled to ?”

On 3.9.2009 reference was received in this Tribunal. Which was register as I.D No. 50/2009 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 1.2.2010 claim statement has been filed by workman. Through which workman prayed as follows:-

“It is , prayed that the punishment inflicted upon the workman may kindly be set aside and the management may be directed to reinstate the workman with full back wages and continuity of service and with other consequential benefits.

Against Claim statement management filed its written statement on 26.05.2010. Where-in it prayed as follows:-

“That in view of the submissions made hereinabove, it is respectfully prayed that the action of the Bank in inflicting the punishment of Compulsory Retirement with Superannuation Benefits i.e. PF and Gratuity as would be due otherwise under the Rules of Regulations prevailing at the relevant time and without disqualification from future employment” upon Sh. Ram Babu be held as legal and justified and no relief be given to him. It is further submitted that in any case Bank has lost confident in Sh. Ram Babu and for this reason also he is not entitled to any reinstatement, as prayed for or otherwise.”

Workman filed rejoinder on 31.08.2010. Where-in he re-affirmed the contents of claim statement .

On 25.04.2013 Dr. R. K Yadav my Ld. Predecessor framed following issues:-

1. Whether enquiry conducted by the management is just, fair and proper?
2. Whether punishment of compulsory retirement with superannuation benefits commensurate to the misconduct of the claimant?
3. As in terms of reference.

Issue No. 1 was treated as preliminary Issue.

Fixed 13.06.2013 for evidence of the parties on the preliminary issues.

On 2.12.2013 an application for substitution of L.Rs of the Deceased substitution of L.Rs of Deceased workman moved. Copy of which supplied to Ld. A/R for the management.

Fixed 21.1.2014 for objection and disposal of aforesaid application.

On 21.1.2014 and 17.2.2014 adjourned have been sought on behalf of management.

On 3.3.2014 no objection on of management filed hence application for substitution L.Rs of Disposal of workman allowed and 3.04.2014 Ld. A/R for the L.R of workman sought adjournment. Hence case adjourned to 12.05.2014.

On 12.05.2014 Ashish S/o deceased workman filed his affidavit in evidence. Copy of which supplied to Ld. A/R for management and 17.07.2014 for tendering of affidavit and cross-examination of S/o workman.

On 17.07.2014 adjournment has been sought on behalf of S/o workman

Allowed & adjourned to 11.09.2014. On 11.09.2014 adjournment has been again sought on behalf of S/o of workman.

Allowed and adjourned to 12.11.2014.

On 12.11.2014 none turn on behalf of S/o workman but adjournment has been sought on behalf management and case adjourned to 13.01.2015.]

On 13.01.2015 none turn on behalf of S/o workman in the interest of justice case adjourned to 10.03.2015 for tendering of affidavit and cross-examination of S/o of workman.

On 10.03.2015 none turn up on behalf of S/o deceased workman.

But case was adjourned to 12.05.2015 on information of Ld. A/R for the management.

On 12.05.2015 , advocates were on strike. Hence case was adjourned to 21.07.2015 for tendering of affidavit and cross-examination of S/o Deceased workman.

On 21.07.2015 advocates were on strike hence case was adjourned to 9.9.2015 for tendering of affidavit and cross-examination of S/o Deceased workman.

On 9.9.2015 in the interest of justice case was adjourned to 26.10.2015 for tendering of affidavit and cross-examination of S/o Deceased workman.

On 26.10.2015 case adjourned to 8.12.2015 for tendering of affidavit and cross-examination of S/o deceased workman.

On 8.12.2015 case was adjourned to 28.1.2016 for tendering of affidavit and cross-examination of S/o Deceased workman.

On 28.1.2016 none present on behalf of S/o workman in the interest of justice case was adjourned to 22.3.2016 for tendering of affidavit and cross-examination of S/o deceased workman.

On 22.03.2016 last opportunity was given to S/o deceased workman for tendering of affidavit and cross-examination and fixed 24.05.2016.

On 24.05.2016 S/o workman remained dormant so his evidence has been closed and fix 28.07.2016 was fixed for management evidence.

On 28.07.2016 Ld. A/R for the management expressed his desire not to adduce any evidence.

Hence I heard the arguments of Ld. A/R for the management and reserved the award.

In the light of his contentions I perused the evidence on record. Which has been not produce by either party. So it is fit case to pass no dispute award.

Which is accordingly passed.

Dated:-14.09.2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2285.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुम्बई पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, मुम्बई के पंचाट (संदर्भ सं. 18/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-31011/8/2012-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2285.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of Mumbai Port Trust, Mumbai, Port Bhavan and their workmen, received by the Central Government on 16.11.2016.

[No. L-31011/8/2012-IR (B-II)]

RAVI KUMAR, Desk Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

**Present :** Justice S.P. MEHROTRA, Presiding Officer

**REFERENCE NO. CGIT-1/18 OF 2013**

#### **Parties :**

Employers in relation to the Management of Mumbai Port Trust

**And**

Their workman (Henry E.L.M.Fernandes) represented by Mumbai Port Trust Mazdoor Sangh

#### **Appearances:**

For the first party/Management	:	Mr. Umesh Nabar, Adv.
For the second part /Union	:	Mr. Prabhakar G.Uparkar, General Secretary
State	:	Maharashtra

Mumbai, dated the 4<sup>th</sup> day of July, 2016.

### AWARD

1. The present Reference has been made by the Central Government by its Order dated 28.2.2013 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The Terms of Reference as per the Schedule to the said Order are as under:

*“Whether the action of Management of Mumbai Port Trust, Mumbai in not giving promotional benefits alongwith pay scale of Senior Section Leader to Henry E.L.M.Fernandes, Section Leader (Retired on 30.9.2011 (AN) for the post of Senior Section Leader w.e.f.1.3.2010 is legal just and proper? What relief the workmen concerned are entitled to?”*

2.. By the Order dated 3.5.2013 passed by this Tribunal, Notices were directed to be issued to the parties fixing 18.6.2013. Notices were accordingly issued to the parties.

3. On 18.6.2013 as noted in the Order passed on the said date, the Representative for the second party/Union and the Representative for the first party/Management were present.

4. On 23.9.2013, Statement of Claim was filed on behalf of the second party/Union.

5. On 6.2.2014, Written Statement was filed on behalf of the first party/Management.

6. On 7.8.2014, documents were filed on behalf of the second party/Union. On 17.11.2014, documents were filed on behalf of the first party/Management.

7. The case was thereafter fixed on various dates for filing affidavit of WW-1 on behalf of the second party/Union.
8. As none was appearing on behalf of the second party/Union on various dates fixed in the matter, fresh notice was directed to be issued to the second party/ Union by the Order dated 23.11.2015. As fresh notice as per the direction given in the Order dated 23.11.2015 was not issued by the Office due to over-sight, the Tribunal by the Order dated 8.2.2016, directed that fresh notice as per the direction given in the Order dated 23.11.2015 be issued to the second party/Union.
9. Fresh Notice was accordingly issued to the second party/Union by Registered Post AD. However, as noted in the Orders dated 21.4.2016, 19.5.2016 and 23.6.2016, neither Registered Envelope nor Acknowledgement Card in respect of the fresh notice issued pursuant to the Order dated 8.2.2016 read with Order dated 23.11.2015, had been received back by the Office. The case was lastly listed on 23.6.2016.
10. By the Order dated 23.6.2016, the case was fixed on 4.7.2016.
11. Pursuant to the Order dated 23.6.2016, the case is put up today.  
Mr.Prabhakar G. Uparkar, General Secretary of the second party/Union is present.  
Mr.Umesh Nabar, learned counsel for the first party/Management is also present.
12. An Application has been filed today by Mr.Prabhakar G.Uparkar, General Secretary of the second party/Union,the contents whereof are reproduced below:  
*“Second party H.E.L.M.Fernandes died in November 2015. Undersigned contacted his legal heirs but they shown no interest in pursuing this matter, neither produced death certificate to the undersigned. Hence this matter may be disposed of as withdrawn”.*
13. Mr.Prabhakar G.Uparkar, General Secretary of the second party/Union states that in view of the circumstances mentioned in the aforesaid Application, the second party/Union prays that the Reference may be disposed of as withdrawn.
14. Mr. Umesh Nabar, learned counsel for the first party/Management has no objection to the prayer made by Mr. Prabhakar G.Uparkar, General Secretary of the second party/Union being granted.
15. In view of the above, it is apparent that the dispute forming the subject-matter of the Reference no longer survives.
16. Reference is, therefore, answered by stating that the dispute forming the subject-matter of the Reference no longer survives.
17. Award is passed accordingly.

Justice S. P. MEHROTRA, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2286.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पी एंड ओ नीडलोयड इंडिया प्रा. लि. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, मुम्बई के पंचाट (संदर्भ सं. 70/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-39012/2/2004-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2286.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 70/2004) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure in the Industrial Dispute between the management of P & O Needlloyed (India) Pvt. Ltd. and their workmen, received by the Central Government on 16.11.2016.

[No. L-39012/2/2004-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI****Present :** Justice S.P. MEHROTRA, Presiding Officer**REFERENCE NO. CGIT-1/70 OF 2004****Parties :**

Employers in relation to the Management of

1. M/s. P&O Needlloyed (India) Pvt. Ltd.
2. M/s. P&O Cruises U.K. Ltd.

**And**

Their Workman

**Appearances :**

For the first party /Management No.1 : Mr. Rahul Nerlekar, Adv.  
 For the first party/Management No.2 : Mr. Rajan Chavan, Adv.  
 For the heirs and legal representatives  
 of the deceased second party/ workman : Mr. Umesh Nabar, Adv.  
 State : Maharashtra

Mumbai, dated the 20<sup>th</sup> day of June, 2016.**AWARD**

1. The present Reference has been made by the Central Government by its Order dated 20.8.2004 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The Terms of Reference as per the Schedule to the said Order are as under:

*“Whether the action of the management of M/s P&O Needlloyed (India) Pvt. Ltd. Mumbai in terminating the services of Shri Menino D’Silva Cabin Steward EMP No. 96707 w.e.f. 28.9.2000 on medical grounds in spite of declaring him fit for Sea Services by the Appellate Medical Board is legal and justified? If not, what relief the concerned workman is entitled to?”*

2. By the Order dated 31.8.2004, notice was directed to be issued to the parties, namely, the second party / Workman (Menino D’Silva) and the first party/Management No. 1 (P&O Needlloyed (India) Pvt. Ltd., Mumbai). Subsequently, notice was also issued to the first party/Management No. 2, namely, M/s. P& O Cruises U.K. Ltd, London.

3. Pleadings were exchanged between the parties. Thereafter, recording of evidence on behalf of the parties commenced. The case is at the stage of recording of evidence.

4. During the pendency of the present Reference, the second party/Workman, namely, Menino D’Silva expired. Thereupon, the heirs and legal representatives of the deceased Menino D’Silva filed an Application dated 2.5.2016 (filed on 19.5.2016), inter-alia, praying for being substituted in place of the deceased Menino D’Silva. The said Application for Substitution was filed on behalf of Mrs. Jennifer Menino D’Silva (Widow), Ms. Sania Menino D’Silva (Daughter) and Mr. Stanford Menino D’Silva (Son) stating themselves to be the heirs and legal representatives of the deceased Menino D’Silva (second party/Workman).

5. By the Order dated 19.5.2016, the said Application for Substitution dated 2.5.2015 (filed on 19.5.2016) was allowed, and it was directed that the name of the deceased Menino D’Silva (second party/Workman) be struck off, and in his place, the names of his aforesaid heirs and legal representatives, namely, Mrs. Jennifer Menino D’Silva (Widow), Ms. Sania Menino D’Silva (Daughter) and Mr. Stanford Menino D’Silva (Son) be substituted.

6. Necessary substitution in the Statement of Claim has since been done.

7. Shri Umesh Nabar, who was appearing as the learned counsel for the second party/Workman (Menino D’Silva) has filed his Vakalatnama for the aforesaid heirs and legal representatives of the deceased Menino D’Silva.

8. Pursuant to the Order dated 19.5.2016, the case is put up today.

Shri Umesh Nabar, learned counsel for the aforesaid heirs and legal representatives of the deceased Menino D’Silva (second party/Workman) is present.

Mr. Rahul Nerlekar, learned counsel for the first party/Management No.1 is present.

Mr. Rajan Chavan, learned counsel for the first party/Management No.2 is present.

9. Mrs. Jennifer D'Silva, widow of the deceased Menino D'Silva, who is one of the heirs and legal representatives who have been brought on record, is present, and she is identified by Shri Umesh Nabar, learned counsel for the aforesaid heirs and legal representatives of the deceased Menino D'Silva (second party/Workman).

10. Today, learned counsel for the parties have filed Consent Terms dated 20.6.2016, and have prayed that the Reference be disposed of as per the Terms and Conditions contained in the said Consent Terms dated 20.6.2016. The Consent Terms dated 20.6.2016 have been signed by the aforesaid Mrs. Jennifer D'Silva, widow of the deceased Menino D'Silva, who is one of the heirs and legal representatives. The Consent Terms have also been signed by Mr. Rakesh Nair, Authorized Representative for the first party/Management No.1 and the first party/Management No.2. The Consent Terms have further been signed by Mr. Rahul Nerlekar, learned counsel for the first party/Management No.1 and Mr. Rajan Chavan, learned counsel for the first party/Management No. 2.

11. Shri Umesh Nabar, learned counsel for the aforesaid heirs and legal representatives of the deceased Menino D'Silva (second party/Workman) has filed today the following:

- (i) Declaration dated 31<sup>st</sup> May, 2016 by the aforesaid Ms. Sania Menino D'Silva, one of the heirs and legal representatives of the deceased Menino D'Silva who have been brought on record.
- (ii) Declaration dated 31<sup>st</sup> May, 2016 by the aforesaid Stanford D'Silva, one of the heirs and legal representatives of the deceased Menino D'Silva who have been brought on record.

In the aforesaid Declaration, the aforesaid Ms. Sania Menino D'Silva has stated that her father Menino D'Silva expired on 11.1.2016 leaving behind herself i.e. Sania Menino D'Silva, her brother namely, Stanford Menino D'Silva and her mother namely, Jennifer Menino D'Silva and no other legal heir; and that after the aforesaid Menino D'Silva expired, her mother namely, Jennifer Menino D'Silva has agreed to settle the subject-matter of the present Reference with the first party for an amount of Rs. 5,00,000/- only in full and final Settlement; and that she i.e. Ms. Sania Menino D'Silva authorizes her mother Jennifer Menino D'Silva to sign the Consent Terms on her behalf and to receive the above amount in full and final settlement on her behalf and consent for final disposal of the present Reference; and that she has no objection if the aforesaid amount is given to her mother Jennifer Menino D'Silva and she shall not have any claim of whatsoever nature, monetary or otherwise, against the first party/Management No.1 and the first party/Management No. 2 on payment of the aforesaid amount to her mother in the present Reference.

12. The aforementioned Declaration by the aforesaid Stanford Menino D'Silva contains similar averments as made in the aforementioned Declaration given by Ms. Sania Menino D'Silva.

13. One of the Consent Terms, namely, Consent Term No.3 reads as under:

*"First Party No.1 shall pay to the Legal Heirs of Second Party a one-time amount of Rs.5,00,000/-, by way of Bankers Cheque as under:-*

<i>Bankers Cheque No.</i>	<i>Dated</i>	<i>Amount</i>
179136	4 <sup>th</sup> June, 2016	Rs.5,00,000/-

*The said Bankers Cheque shall be handed over to Mrs. Jennifer Menino D'Silva on the date of the Order/Award disposing of the Reference as settled as per these consent terms."*

Consent Term No. 4 reads as under:

*"The Second Party hereby acknowledges receipt of the aforesaid Bankers Cheque in full and final settlement of all claims against the First Party No.1 and 2 and unconditionally accepts the present Consent Terms and Award/Order pursuant thereto."*

14. As per the aforementioned Terms contained in the Consent Terms, the aforesaid Bankers Cheque for Rs.5,00,000/- has been given to the aforesaid Mrs. Jennifer Menino D'Silva, and she has acknowledged the receipt of the said Bankers Cheque. A Receipt in this regard duly signed by the aforesaid Mrs. Jennifer Menino D'Silva is enclosed with the Consent Terms.

15. As noted above, learned counsel for the parties are agreed that the dispute forming the subject-matter of the present Reference be disposed of as per the aforesaid Consent Terms dated 20.6.2016.

16. In view of the above, the Dispute forming the subject-matter of the present Reference is disposed of as per the aforesaid Consent Terms dated 20.6.2016.

17. Reference is, therefore, answered by stating that the Dispute forming the subject-matter of the Reference is disposed of as per the aforesaid Consent Terms dated 20.6.2016.

18. Award is passed accordingly. The aforesaid Consent Terms dated 20.6.2016 will form part of the Award.

Justice S. P. MEHROTRA, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2287.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 05/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-12011/19/2013-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2287.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 16.11.2016.

[No. L-12011/19/2013-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

**Reference: No. 05/2013**

Employer in relation to the management of Punjab National Bank, Patna

AND

Their workman

**Present :** Shri R.K. Saran, Presiding Officer

#### Appearances:

For the Employers : Shri R.K. Karma, Sr.Officer

For the workman : None

State : Jharkhand

Industry : Banking

Dated : 20/10/2016

#### AWARD

By order No. L-12011 /19/2013-IR(B-II) dated 08/05/2013, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

#### SCHEDULE

**“Whether the action of the management of Punjab National Bank, Fatuha and Patna was erroneous in terminating the services of Sri Rakesh Prasad Singh and disallowing his regularization in the service of bank? If so, what remedy lies with the workman and what relief should be given to him ?”**

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by the workman none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2288.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 1406/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-12012/90/2002-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2288.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1406/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure in the Industrial Dispute between the management of Union Bank of India and their workmen, received by the Central Government on 16.11.2016.

[No. L-12012/90/2002-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,

Dated : 19<sup>th</sup> October, 2016**Reference: (CGITA) No. 1406/2004**

The General Manager,  
Union Bank of India,  
Central Office, Union Bank Bhawan,  
Nariman Point,  
Mumbai

...First Party

**V/s**

Shri S.A. Shaikh,  
Laxmi Co-op. Housing Society,  
4<sup>th</sup> Floor, Saiyad Street, Killa Pardi,  
Valsad (Gujarat) – 396125

...Second Party

For the First Party : Shri J.B. Zariwala

For the Second Party : Shri S.A. Shaikh

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/90/2002-IR(B-II) dated 29.08.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the action of the management of Union Bank of India, Vapi Branch through the Manager (P) and its officers in dismissing Shri S.A. Shaikh from service vide order dated 05.08.2000 is legal, proper and justified? If not, what relief the concerned workman is entitled to and from which date and what other directions are necessary in the matter?”

1. The reference dates back to 29.08.2002. Both the parties submitted the vakalatpatra of their advocates respectively but did not prefer to submit the statement of claim or written statement as the case may be.

2. Both the parties and their counsels have been absent since last several dates. Therefore, the reference is disposed of as not pressed on account of their absence and the action of the management of Union Bank of India, Vapi Branch through the Manager (P) and its officers in dismissing Shri S.A. Shaikh from service vide order dated 05.08.2000 is legal, proper and justified.
3. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2289.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोचीन के पंचाट (संदर्भ सं. 17/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-12012/95/2010-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2289.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Chochin as shown in the Annexure in the Industrial Dispute between the management of Bank of India, Zonal Office Kerala and their workmen, received by the Central Government on 16.11.2016.

[No. L-12012/95/2010-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

**Present:** Shri. K. Sasidharan, B.Sc., LL.B, Presiding Officer

(Thursday the 25th day of August, 2016/03rd Bhadrapada, 1938)

#### ID 17/2011

Workman	:	Shri. V. A. Kumaran, Vashekuzhiyil House, Mamalasserry P.O., Ramamangalam, Ernakulam Distt., Kerala –  By Adv. Shri. H. B. Shenoy
Management	:	The Zonal Manager, Bank of India, Zonal Office Kerala, Kaloor Towers, Kaloor, Kadavanthra Road, Kochi (Kerala) – 682017.  By Adv. Shri. Devan Ramachandran

This case coming up for final hearing on 13.07.2016 and this Tribunal-cum-Labour Court on 25.08.2016 passed the following:

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and of Section 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947) the Central Government referred the following dispute before this Tribunal for adjudication.

2. The dispute is:

“Whether the action of the management of Bank of India in dismissing Shri V. A. Kumaran, Safai Karamchari-cum-Sepoy of Anchalpetty branch w.e.f. 29.09.2009 is justified? What relief the workman is entitled to?”

3. After the receipt of reference Order No.L-12012/95/2010-IR(B-II) dated 27.05.2011, issued by the Ministry of Labour, Government of India, summons was issued to the parties to appear in person, to submit their pleadings and produce documents to substantiate their respective contentions.

4. The contentions in the claim statement filed by the workman in brief are as follows:-

The workman involved in this reference Shri V. A. Kumaran joined as a part-time sweeper in the services of the Anchalpetty branch of the management bank in July, 1993. With effect from 01.07.2004 the management bank posted him as safai karmachari-cum-sweeper at their Anchalpetty branch. He was suspended from service pending investigation/enquiry as per the suspension order dated 30.04.2008, issued by the Zonal Manager, Kerala Zone as the Disciplinary Authority. The allegation against him was that the workman fraudulently removed two gold bangles pledged as security from the gold loan account, one each from LN 8835 of Shri David Iype and LN 8867 of Smt. Shiji Reji at Anchalpetty branch and to cover up the misdeed, tampered the loan documents and altered the number of gold ornaments pledged as security. The management has alleged that the workman has admitted the misconduct and submitted the confession letter dated 26.04.2008 and repaid the sum of ₹ 32,000/- on 28.04.2008 towards the cost of the gold ornaments removed.

5. The management issued a charge sheet dated 16.02.2009 alleging that the the workman has committed misconduct of “doing acts prejudicial to the interests of the Bank”. The management appointed Mr.Xavier James, Senior Manager of the Zonal Office as the enquiry officer and Mr.V.V. Shaji, Manager, Marampilly branch as presenting officer. The enquiry officer conducted a namesake and farce enquiry, without following the principles of natural justice and without affording fair and reasonable opportunity to the workman to substantiate his contentions. The enquiry officer submitted report dated 20.06.2009 with the finding that the workman is guilty of the charges alleged. After obtaining copy of the enquiry report the workman submitted his written submission against the report. The disciplinary authority failed to appreciate the submission made by the workman and passed an order dated 12.08.2009 with the proposed punishment to be imposed on the workman. Against that order, the workman made his submissions which was not considered by the disciplinary authority. Thereafter an order dated 20.09.2009 was passed imposing the punishment of dismissal from service without notice, treating the suspension period as one out of duty and without any benefits. Against that order the workman preferred an appeal before the appellate authority and it was dismissed as per the order dated 19.03.2010.

6. The workman is absolutely innocent. He has not committed any act as alleged by the management. He was victimized at the hands of the Manager and other responsible officers at the Anchalpetty branch of the management bank. The punishment imposed on the workman is unjust, illegal and without any reason. He has stated that in the course of domestic enquiry the enquiry officer has not afforded opportunity to him to verify the original documents. He was not allowed to examine witnesses or produce documents to prove his innocence. The action of the enquiry officer caused prejudice to the workman. He was not allowed to have the assistance of a defence representative. He cannot be proceeded for gross misconduct as alleged in the charge sheet. At the most he can be proceeded only for minor misconduct as defined in the Bipartite Settlements. Therefore the workman has requested to set aside the punishment imposed by the management – “dismissal from service without notice” and to reinstate him with full back wages, continuity of service and other attendant benefits.

7. The contentions in the written statement submitted by the management in brief are as follows:-

The management has denied all the averments in the claim statement filed by the workman except those that are specifically admitted. While working as safai karmachari in the management bank at its Anchalpetty branch, proceedings were initiated against the workman for the removal of two gold bangles pledged as security in two gold loan accounts one each from LN 8835 of Shri David Iype and the other from LN 8867 of Smt. Shiji Regi at Anchalpetty branch. In order to cover up that misdeed, the workman altered the entries in the relevant loan records relating to the number of gold ornaments accepted as security. When the misconduct committed by the workman came to light, he confessed and submitted a letter dated 26.04.2008 to that effect. Further he remitted a sum of ₹ 32,000/- towards the cost of the ornaments removed by him. A letter to that effect dated 28.04.2008 issued by the workman will reveal this aspect.

8. As per the notice dated 01.11.2008 the management requested the workman to submit explanation for the acts of misconduct alleged against him. A true Malayalam translation of the said letter was also provided to the workman. The allegation that the workman was made as a scapegoat by the Manager and other staff members of Anchalpetty branch is absolutely false. The enquiry officer has afforded fair and reasonable opportunity to the

workman to substantiate his contentions. The workman defended his case on his own, even though opportunity was afforded to him to have the assistance of a defence representative. He cross-examined MW4, the witness examined before the enquiry officer. The enquiry officer has provided copy of the Malayalam translation of the entire enquiry proceedings to the workman and obtained acknowledgement of the same. The contention of the workman that the enquiry is vitiated, is absolutely false. After obtaining the enquiry report the management has complied all the procedural requirements before ordering the proposed punishment. They have followed the clauses in the Bipartite Settlement entered between the management and its workmen. The workman has committed gross misconduct as specified under clause 5(J) of the Bipartite Settlement. The punishment imposed by the management is just, proper and in proportion to the gravity of the misconduct committed by the workman. The management has requested to uphold their contentions and disallow the claim of the workman.

9. After filing written statement by the management the workman filed rejoinder reiterating the contentions in the claim statement.

10. The workman has stated that he cannot understand English language. He has stated that the confession letter is a document concocted by the management in a blank signed paper obtained by coercion; threatening arrest, police torture and loss of job. The workman was not allowed to have the assistance of a defence representative during the course of enquiry. He has requested to uphold his contentions and pass an award accordingly.

11. After affording sufficient opportunity to the parties to take steps and produce documents, the validity of the domestic enquiry was considered as the preliminary point. As per the order dated 19.01.2016 it was held that the enquiry conducted by the management is valid and proper. Thereafter the learned counsel appearing for parties were heard.

12. The points arising for consideration are:

- (i) Whether the workman Shri V. A. Kumaran, safaikarmachari at the Anchalpetty branch of the management bank has committed gross misconduct as stated in the charge sheet dated 16.02.2009?
- (ii) Whether the punishment of dismissal from service imposed by the management on the workman Shri V. A. Kumaran is just and proper and in proportion to the gravity of the misconduct committed by him?
- (iii) To what relief the workman is entitled?

13. Point No.(i):- The workman involved in this reference Shri V. A. Kumaran joined as a part-time sweeper in the services of the Anchalpetty branch of the management bank in July, 1993. With effect from 01.07.2004 the management bank posted him as Safai Karmachari-cum-Sepoy at the same branch. While he was continuing in service as a safai karmachari-cum- sepoy at the Anchalpetty branch of the management bank, he was kept under suspension w.e.f.30.04.2008 as per the suspension order issued by the Zonal Manager, Kerala Zone of the management bank. The allegation against the workman is that he had fraudulently removed two gold bangles pledged as security in the gold loan account – one each from LN 8835 of Shri David Iype and LN 8867 of Smt. Sjiiji Reji of Anchalpetty branch. The management has further alleged that the workman, in order to cover up the misdeed, tampered the loan documents and altered the number of gold ornaments pledged as security. The workman has stated that he is innocent of the allegations levelled against him. According to the workman he has been made as a scapegoat by the then Manager; other employees of the branch and the higher officials of the management bank so as to cover up the misdeeds of the other employees of the Anchalpetty branch. He has stated that he is absolutely innocent and requested to set aside the punishment order and to reinstate him with back wages and continuity of service and other benefits.

14. The management has contended that the workman committed the misdeed by fraudulently removing the gold ornaments from the gold loan account No. LN 8835 of Shri David Iype and LN 8867 of Smt. Sjiiji Reji at Anchalpetty branch. They have further stated that to cover up the misdeeds the workman altered the entries in the relevant loan records relating to the number of gold ornaments accepted as security. The management has stated that when the misconduct came to light the workman confessed the commission of the act as per letter dated 26.04.2008 and remitted a sum of ₹32,000/- towards the value of the gold ornaments removed by him. The management would state that the workman voluntarily admitted his involvement in the fraudulent act and made good the value of the gold ornaments and hence he has no legal right to maintain an industrial dispute of this nature.

15. The management has stated that they issued a notice dated 01.11.2008 requiring the workman to submit explanation regarding the commission of the alleged act of misconduct and that a true Malayalam translation of the same was also made available to him. The contention of the workman that he has been made as a scapegoat by the other employees of the bank, is denied by them.

16. The management has stated that they have conducted an impartial enquiry in this matter and ample opportunity was afforded to the workman to substantiate his defence and submissions thereof. It is stated that the workman cross-examined MW4, the witness examined before the enquiry officer. It is stated that the workman informed the enquiry

officer that he has nothing to cross examine the other management witnesses. The management has stated that the enquiry officer conducted the proceedings in Malayalam but recorded the same in English in presence of the workman and it was read over and explained in detail to him by the enquiry officer and its Malayalam translation was made available to him and obtained acknowledgement of the same from the workman. It is stated that even though the enquiry officer allowed the workman to seek the assistance of a representative of his choice during the enquiry, he refused to avail such an opportunity. According to the management the enquiry officer conducted the enquiry after following the principles of natural justice and afforded fair and reasonable opportunity to the workman to substantiate his contentions.

17. The management has stated that they have complied all the statutory prerequisites before passing final orders against the workman. It is stated that the workman has committed gross misconduct as specified under clause 5(J) of the Bipartite Settlement dated 27.03.2000. According to the management the punishment imposed on the workman i.e., dismissal from service without notice on 20.09.2009 is just, proper and in proportion to the gravity of misconduct committed by the workman.

18. After filing written statement by the management the workman filed rejoinder reiterating the contentions in the claim statement. Thereafter opportunity was afforded to the parties to take steps and produce documents to substantiate their respective contentions. As requested by the learned counsel for the management, the validity of the domestic enquiry was considered as the preliminary point. As per the order dated 19.01.2016 it is held that the domestic enquiry conducted by the management was valid; proper and by following the principles of natural justice.

19. Thereafter the learned counsel for the parties were heard in detail.

20. The learned counsel for the workman submitted that the workman involved in this reference – Shri. V. A. Kumaran was employed as safai karmachari-cum-sepoy at the Anchalpetty branch of the management bank. It is stated that the workman had no access of the valuables and registers retained in the bank and as such he is absolutely innocent of the allegations levelled against him. It is submitted that the valuables pledged by the customers with the bank are in the safe custody of the bank and it is in the joint custody of joint custodians who are the other employees of the bank. The learned counsel further submitted that the valuables were in the joint custody of Shri P V Ramana and Shri K R Harikumar who were handling the transactions with the customers of the bank. It is submitted that the allegation that the workman tampered the documents retained in the bank, is absolutely false. The learned counsel submitted that the branch Manager threatened the wife of the delinquent workman and in that circumstance he was compelled to make an admission statement. The learned counsel for the management submitted that the allegation of misconduct levelled against the workman is proved beyond reasonable doubt and as such the workman is guilty of the charges levelled against him.

21. Ext.2A marked in the domestic enquiry is the loan document in the name of Smt. Shiji Regi, retained in the bank. In that document it can be seen that there was alteration of the number of bangles from six to five. There is no evidence to prove as to who made the alteration in that document. So also in Ext.2B there is alteration in the number of gold ornaments pledged by Shri.David Iype. Ext.3 is the letter dated 26.04.2008 given by the delinquent workman to the Manager of the Anchalpetty branch of the management bank. In that letter there is a clear admission by the workman to the effect that he has committed the misdeed by oversight. Moreover, he agreed to pay the value of the ornaments and compensation thereof and hence requested to drop disciplinary proceedings against him. He also promised that he will not repeat such instances in future. Ext. No.4 dated 26.04.2008 is the letter addressed to the Manager of the Anchalpetty branch of the management bank by the delinquent workman. In that document also he has admitted that the commission of the misdeed and promised to repay the cost thereof and hence requested to exonerate him from any severe action. Ext.5 dated 28.04.2008 is the letter issued by the workman. As per that letter the workman remitted a sum of `32,000/- towards the cost of gold ornaments removed by him. In view of the express admission by the workman at the initial stage of the proceedings it is evident that he is involved in the commission of the misdeed as alleged by the management. The evidence tendered by the witnesses examined before the enquiry officer as revealed from Ext.M1 file and the documents marked in the enquiry probabalise the fact that it was the workman who is responsible for the missing of gold ornaments from and out of the gold ornaments pledged by Shri David Iype and Smt Shiji Regi.

22. Even though the workman has at a later stage stated that he has been made as a scapegoat by the Manager and other employees of the Anchalpetty branch, there is no acceptable evidence to prove the same. He has not adduced any acceptable evidence in support of his contentions. Therefore point No.1 is answered to the effect that the workman has committed the misdeed of removal of gold ornaments from Loan No.8835 of Shri David Iype and LN 8867 of Smt. Shiji Regi pledged with the Anchalpetty branch of the management bank.

23. Point Nos.(ii) & (iii):- The learned counsel for the workman submitted that there is no supporting evidence to suggest that the workman altered the entries in the register of gold ornaments retained in the bank. It is true that except the testimony of the witnesses examined before the enquiry officer there is no other independent oral evidence to

substantiate the same. Since the workman has in clear terms admitted the misdeed and offered to pay the cost of the valuables and paid the cost of the gold ornaments immediately on the next day of detecting the mischief, it is evident that the workman was involved in the commission of the misdeed as alleged by the management.

24. The learned counsel for the workman submitted that the workman is only a safaikarmachari and he has no knowledge about the enquiry proceedings. It is submitted that the workman was threatened with dire consequences and in such circumstance he was compelled to put his signature in the confession letter produced by the management. It is true that it is the responsibility of the joint custodians to ensure that the gold ornaments pledged with the bank are retained in safe custody with due care and caution. As per the records the possibility for access to a safaikarmachari-cum-sepoy to the valuables pledged with the bank is highly remote. The learned counsel submitted that the workman is illiterate and he has to look after his wife and two minor children and hence requested to set aside or reduce the punishment imposed on him.

25. The learned counsel for the workman submitted that the workman is illiterate and he has been made as a scapegoat by the other staff members of the management bank. If in fact as submitted by the learned counsel, the workman was innocent, he ought to have adduced evidence to substantiate his plea. Except the contention in the claim statement and the submission by the learned counsel for the workman there is no convincing evidence to substantiate the plea that the workman has been made as a scapegoat by the other responsible staff members in the management branch. It is true that the access of the workman to the valuables pledged as security before the bank is an important factor to be considered. The workman has in clear terms admitted that at the time when the packet containing the valuables were entrusted to him for the purpose of sealing, he removed those valuables from and out of those packets. In such circumstance it cannot be held that the workman has been made as a scapegoat by the persons who are in charge of the valuables. The misconduct committed by the workman has affected the reputation of the bank. In such circumstance no leniency is expected in the punishment imposed on a person who has committed mischief with the valuables entrusted with the bank as security for advancing the loan amount. Therefore it is held that the punishment imposed by the management is in proportion to the gravity of the misconduct committed by him. It follows that the workman is not entitled to any relief as claimed in the claim statement. Hence the points are answered against the workman.

In view of the finding on the points for consideration an award is passed holding that the workman is not entitled to any relief as per this reference.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 25th day of August, 2016.

SASIDHARAN K., Presiding Officer

#### APPENDIX

**Witness for the Workman**

NIL

**Witness for the Management**

MW1 03.12.2014

Shri Xavier James

**Exhibit for the Workman**

NIL

Exhibit for the Management

M1 - Enquiry File

नई दिल्ली, 16 नवम्बर, 2016

**का.आ. 2290.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, कोटा के पंचाट (संदर्भ सं. 8/1993) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-12012/420/1992-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2016

**S.O. 2290.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 8/1993) of the Industrial Tribunal-cum-Labour Court, Kota as

shown in the Annexure, in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 16.11.2016.

[No. L-12012/420/1992-IR (B-II)]

RAVI KUMAR, Desk Officer

### अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा, (राज.)

पीठासीन अधिकारी— श्रीमती अनिता शर्मा, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक: औ. न्या.(केन्द्रीय)—8/1993

दिनांक स्थापित : 18/3/93

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्रं. एल-12012/420/92-आईआरबी III दि.12/3/93

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) एवं उपधारा 2(क) औद्योगिक विवाद अधिनियम, 1947

### मध्य

घासी लाल पुत्र रामकरण शर्मा द्वारा क्षेत्रीय मंत्री, हिन्द मजदूर सभा,  
बंगाली कोलोनी, छावनी, कोटा

—प्रार्थी श्रमिक

### एवं

क्षेत्रीय प्रबन्धक, पंजाब नेशनल बैंक, 30 कृष्णा कोलोनी, भरतपुर

—अप्रार्थी नियोजक

### उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि : श्री एन.के.तिवारी

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री सुरेश माथुर

अधिनिर्णय दिनांक : 28/4/2016

### :: अधिनिर्णय ::

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दिनांक 12/3/1993 के जरिये निम्न निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) एवं उपधारा 2(क) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:—

"Whether Shri Gasi Lal S/o Shri Ram Karan Sharma casual employees at Rampoor Branch PNB at Kota is a workman and whether his termination w.e.f. 21/8/91 by the Punjab National Bank is legal and justified?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को सूचना/नोटिस जारी कर विधिवत अवगत करवाया गया।

3. प्रार्थी ने अपना क्लेम स्टेटमेंट न्यायाधिकरण के समक्ष प्रस्तुत कर व्यक्त किया है कि प्रार्थी को अप्रार्थी नियोजक द्वारा दि. 30/11/90 से चतुर्थ श्रेणी कर्मचारी के पद पर सेवा में नियोजित किया गया था। नियोजक ने प्रार्थी को नियोजित करते समय कोई नियुक्ति-पत्र नहीं दिया और सेवा अवधि के दौरान वेतन से पूर्व वेजस्लिप भी कभी नहीं दी। सेवा से सम्बन्धी कोई रेकार्ड प्रार्थी के पास नहीं है, समस्त रेकार्ड नियोजक के कब्जे में है। नियोजक ने प्रार्थी को अचानक बिना कोई कारण बताये दि. 21/8/91 से अवैध रूप से नौकरी से हटा दिया। प्रार्थी ने नियोजक के यहाँ दि. 30/11/90 से 28/8/91 तक निरन्तर कार्य करते हुए उक्त अवधि में 240 दिन से अधिक समय तक कार्य कर लिया है। प्रार्थी को नौकरी से निकालने के बाद प्रार्थी ने दि. 23/8/91 व 27/8/91 को रजि.एडी डाक द्वारा प्रार्थना-पत्र प्रेषित किये जिसमें नियोजक से नौकरी पर लिये जाये जाने बाबत प्रार्थना की गयी, परन्तु दोनों ही प्रार्थना-पत्रों को नियोजक ने लेने मना कर दिया। नियोजक के अधीन कोटा सिटी में बैंक की आठ शाखाएँ हैं तथा नियोजक के अधीन 100 से अधिक श्रमिक नियोजित हैं, इस कारण नियोजक पर औ.वि. अधिनियम की धारा 25-एन के प्रावधान लागू होते हैं, परन्तु उक्त प्रावधानानुसार प्रार्थी की छंटनी किये जाने के सम्बन्ध में केन्द्रीय सरकार से नियोजक ने कोई अनुमति नहीं ली, ना ही 3 माह का नोटिस अथवा अग्रिम वेतन दिया गया, ना ही कोई छंटनी का मुआवजा अदा किया। इसके अतिरिक्त अप्रार्थी द्वारा अधिनियम के आज्ञापक प्रावधानों की पालना भी नहीं की गयी व अवैध रूप से प्रार्थी को नौकरी से निकाल दिया। अतः प्रार्थी ने अपने क्लेम स्टेटमेंट के माध्यम से अप्रार्थी के यहाँ पिछले सम्पूर्ण वेतन व हितलाभों सहित सेवामें बहाल किये जाने की प्रार्थना न्यायाधिकरण से की है।

4. उपरोक्त क्लेम स्टेटमेंट का जवाब प्रस्तुत कर अप्रार्थी की ओर से व्यक्त किया गया है कि बैंक में सेवा-शर्तें शास्त्री अवार्ड, देसाई अवार्ड एवं विभिन्न द्विपक्षीय समझौते के प्रावधानों द्वारा निर्धारित की जाती हैं। देसाई अवार्ड के पैरा 16.9 के अनुसार ये शर्तें उन कर्मचारी पर लागू नहीं होती हैं जोकि बैंक में केजुअल एम्पलाईज हैं या जिनके जोब वर्क के लिए बुलवाया जाता है। प्रार्थी घासीलाल को बैंक में किसी प्रकार की नियुक्ति नहीं दी गयी। प्रार्थी को कुछ समय के लिए केजुअल या जोब वर्क के लिए बुलवाया गया था जो अवधि 240 दिन से काफी कम है। घासीलाल ने कुल 212 दिन काम किया है, तदनुसार प्रार्थी को इसका भुगतान कर दिया गया था। कुछ दिन घासीलाल ने दो बार भुगतान प्राप्त किया है, जबकि वह एक ही दिन काम करना गिना जायेगा। घासीलाल व नियोजक के मध्य कर्मकार व नियोजक का सम्बन्ध स्थापित नहीं है, अतः प्रार्थी को औ.वि. अधिनियमान्तर्गत “कामगार” नहीं माना जा सकता। घासीलाल को केजुअल लेबर के तौर पर कुछ जोब कार्य के लिए रखा गया था तथा जिस कार्य पर उसे रखा गया था वह कार्य समाप्त होते ही घासीलाल की नौकरी स्वतः ही समाप्त हो गयी, इस कारण अधिनियम की धारा 2 (ओओ)(बीबी) के तहत घासीलाल का मामला छंटनी की परिभाषा में नहीं आता। अतः मामले में अधिनियम की धारा 25-एफ, जी एवं एन के प्रावधान लागू नहीं होते हैं। प्रबन्धक, पंजाब नेशनल बैंक को प्रार्थी का नियोजक नहीं माना जा सकता क्योंकि उनकी बैंक को कर्मचारी नियुक्ति करने का अधिकार नहीं है। प्रार्थी को अप्रार्थी बैंक ने किसी प्रकार की नियुक्ति नहीं दी है। औ.वि. अधिनियम की धारा 25-एन के छंटनी सम्बन्धी प्रावधान प्रार्थी पर लागू नहीं होते हैं। जब प्रार्थी को अप्रार्थी द्वारा नियुक्ति ही नहीं दी गयी है तो प्रार्थी को अप्रार्थी बैंक द्वारा हटाये जाने का कोई प्रश्न ही उत्पन्न नहीं होता। अतः प्रार्थी का मामला समाप्त किये जाने योग्य होना व्यक्त करते हुए प्रार्थी को मामले में कोई अनुतोष प्राप्त करने का अधिकारी नहीं होना व्यक्त किया गया है।

5. साक्ष्य में स्वयं प्रार्थी घासीलाल तथा अप्रार्थी पक्ष की ओर से गजेन्द्र कुमार चोरसिया के शपथ-पत्र प्रस्तुत किये गये, जिनसे दोनों पक्षों के प्रतिनिधिगण द्वारा एक-दूसरे पक्ष के शपथ-पत्रों पर जिरह की गयी। प्रलेखीय साक्ष्य में प्रार्थी श्रमिक की ओर से प्रदर्श डबल्यू.1 लगायत डबल्यू.124 प्रलेख प्रस्तुत किये गये हैं। यद्यपि प्रार्थी ने अपने शपथ-पत्र में प्रदर्श डबल्यू.8 लगायत डबल्यू.127 के रूप में बाउचर्स होना व्यक्त किया है, परन्तु प्रार्थी द्वारा अभिलेख पर केवल मात्र प्रदर्श डबल्यू. 8 लगायत 124 तक ही बाउचर्स प्रदर्शित करवाये गये हैं। अप्रार्थी पक्ष की ओर से प्रदर्श एम.1 लगायत एम.4 तक प्रलेख प्रस्तुत कर प्रदर्शित करवाये गये हैं।

6. उभयपक्ष के विद्वान प्रतिनिधिगण की बहस सुनी गयी, उनकी ओर से लिखित बहस भी प्रस्तुत की गयी, जिसका तथा अभिलेख पर उपलब्ध साक्ष्य व सामग्री का ध्यानपूर्वक परिशीलन किया गया।

7. विद्वान प्रतिनिधि प्रार्थी की ओर से न्यायाधिकरण के समक्ष तर्क रखा गया है कि प्रार्थी ने दि.30/11/90 से अप्रार्थी नियोजक के यहाँ चतुर्थ श्रेणी कर्मचारी के पद पर सेवामें नियोजित होकर दि.21/8/91 तक निरन्तर 240 दिन से अधिक का कार्य कर लिया था, परन्तु अप्रार्थी द्वारा प्रार्थी को औ.वि.अधिनियम की धारा 25-एफ, जी, एवं एन के प्रावधानों की अवहेलना कर अवैध रूप से सेवा से निष्कासित किया गया है। अतः प्रार्थी पिछले सम्पूर्ण वेतन, हितलाभों सहित सेवा में बहाल होने का अधिकारी है।

8. इसके विपरीत दूसरी ओर अप्रार्थी पक्ष के विद्वान प्रतिनिधि द्वारा तर्क रखा गया है कि अप्रार्थी द्वारा प्रार्थी को सेवा में नियोजित नहीं किया गया प्रार्थी को केजुअल लेबर के तौर पर कुछ जोब कार्य के लिए रखा गया था तथा जिस कार्य के लिए उसे रखा गया था, उसकी समाप्ति पर प्रार्थी घासीलाल की नौकरी स्वतः ही समाप्त हो गयी। अतः औ.वि.अधिनियम की धारा 2(ओओ)(बीबी) के तहत प्रार्थी का मामला छंटनी का नहीं है तथा मामले में अधिनियम की धारा 25-एफ, जी, व एन के प्रावधान लागू नहीं होने से प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

9. इस प्रकार मामले में प्रार्थी का पक्ष रहा है कि प्रार्थी ने अप्रार्थी के यहाँ दि.30/11/90 से चतुर्थ श्रेणी कर्मचारी के पद पर सेवामें नियोजित होकर निरन्तर कार्य करते हुए 240 दिन से अधिक का कार्य कर लिया है, परन्तु अप्रार्थी द्वारा उसे दि. 21/8/91 से अवैध रूप से सेवा से निष्कासित कर दिया गया। जब भी कोई कर्मकार नियोजक के नियोजन में निरन्तर 240 दिन तक कार्य किया जाना व्यक्त करता है तो इस तथ्य को सिद्ध करने का भार स्वयं कर्मकार पर रहता है कि उसने सेवा समाप्ति तिथि से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन तक नियोजक के नियोजन में कार्य किया है, जैसा कि माननीय उच्चतम न्यायालय द्वारा अपने निम्न न्यायनिर्णयन में अभिमत प्रकट किया गया है:-

(1) "Surendranagar Distt. Panchayat & Anr. v. Gangaben Laljibhai & Ors.-2006(2)ACJ 408(SC)"

10. न्यायदृष्टांत “आर.एम. येल्डटी बनाम सहायक अधिशासी अभियन्ता-2006(108) एफएलआर 213 (एससी)” के मामले में माननीय उच्चतम न्यायालय द्वारा यह भी प्रतिपादित किया गया है कि कर्मकार पर 240 दिन लगातार काम करने के तथ्य को साबित करने का जो भार है, उसमें कर्मकार द्वारा केवल मात्र अपने शपथ-पत्र में यह लिख देना कि उसने 240 दिन तक लगातार काम किया, पर्याप्त नहीं होगा, अपितु उसे किसी ठोस मौखिक एवं दस्तावेजी साक्ष्य से इस तथ्य को साबित करना होगा जिससे कि यह तथ्य सम्पुष्ट हो सके। इस सम्बन्ध में न्यायनिर्णय के पैरा संख्या 17 निम्नानुसार है:-

“Analyzing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of terminating of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in

most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter of facts of each case. The above however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon facts of each case.”

11. हस्तगत मामले में प्रार्थी ने अप्रार्थी के नियोजन में सेवा समाप्ति की तिथि 21/8/91 से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन कार्य किये जाने के तथ्य को साबित किये जाने हेतु न्यायालय के समक्ष स्वयं का शपथ-पत्र प्रस्तुत कर व्यक्त किया है कि अप्रार्थी द्वारा प्रार्थी को दि. 30/11/90 से चतुर्थ श्रेणी कर्मचारी के पद पर सेवा में नियोजित किया गया था। प्रार्थी ने अप्रार्थी के नियोजन में 240 दिन से अधिक समय तक कार्य कर लिया था, परन्तु अप्रार्थी द्वारा उसे दि. 21/8/91 से नौकरी से हटा दिया गया। नौकरी से निकाले जाने के बाद प्रार्थी ने अप्रार्थी को दि. 23/8/91 व 27/8/91 को रजि.एडी डाक द्वारा नौकरी पर लिये जाने के सम्बन्ध में प्रार्थना-पत्र प्रेषित किये। प्रार्थी की ओर से उक्त दोनों दस्तावेजात प्रदर्श डबल्यू.1 व डबल्यू.2 के रूप में न्यायाधिकरण के समक्ष प्रस्तुत कर प्रदर्शित करवाये गये हैं, परन्तु उक्त दोनों दस्तावेजात के सम्बन्ध में अप्रार्थी की ओर से उपस्थित आये साक्षी गजेन्द्र कुमार चोरसिया ने अपनी जिरह में व्यक्त किया है कि प्रदर्श डबल्यू.1 इसे व्यक्तिगत रूप से बैंक में नहीं मिला। इस साक्षी ने प्रदर्श डबल्यू.3 व डबल्यू.4 रजिस्टर्ड डाक के लिफाफों को स्वयं के द्वारा लेने से इन्कार किया है। इसके अतिरिक्त उक्त दस्तावेज प्रदर्श डबल्यू. 1 व डबल्यू. 2 में प्रार्थी द्वारा अप्रार्थी के यहाँ दि. 30/11/90 से 22/8/91 तक नौकरी किये जाने का उल्लेख किया गया है। इस प्रकार सम्प्रेषित निर्देश/रेफ्रेन्स में व प्रार्थी की ओर से प्रस्तुत किये गये क्लेम स्टेटमेन्ट तथा साक्ष्य में प्रस्तुत किये गये शपथ-पत्र में प्रार्थी ने स्वयं को अप्रार्थी द्वारा दि. 21/8/91 से नौकरी से हटाना व्यक्त किया है, जबकि उक्त दस्तावेज प्रदर्श डबल्यू.1 व डबल्यू.2 में प्रार्थी को नौकरी से हटाने की दिनांक 22/8/91 अंकित की गयी है। इसके अतिरिक्त उक्त दोनों दस्तावेजात से प्रार्थी द्वारा अप्रार्थी के नियोजन में सेवा समाप्ति की तिथि 21/8/91 से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन कार्य किये जाने का तथ्य प्रमाणित नहीं होता है। प्रदर्श डबल्यू. 3 व डबल्यू. 4 जो उक्त डाक लिफाफों की जेरोक्स प्रतियां हैं, वे भी इस सम्बन्ध में प्रार्थी श्रमिक को कोई लाभ नहीं पहुँचाती हैं। प्रार्थी द्वारा प्रदर्श डबल्यू. 5 के रूप में स्वयं का नौकरी से हटाने के सम्बन्ध में दि. 9/9/91 को सहायक श्रम आयुक्त (केन्द्रीय) कोटा के समक्ष प्रस्तुत की गयी शिकायत-पत्र की फोटोप्रति है, प्रदर्श डबल्यू. 6 उक्त शिकायत के सम्बन्ध में अप्रार्थी की ओर से प्रस्तुत जवाब की फोटोप्रति है, प्रदर्श डबल्यू. 7 असफल वार्ता प्रतिवेदन की फोटोप्रति है, परन्तु उक्त तीनों दस्तावेज भी प्रार्थी श्रमिक को अप्रार्थी के नियोजन में निरन्तर 240 दिन कार्य किये जाने के तथ्य को साबित किये जाने में कोई लाभ नहीं पहुँचाते हैं। प्रार्थी की ओर से अप्रार्थी द्वारा स्वयं को वेतन भुगतान किये जाने के सम्बन्ध में क्रेडिट कार्ड बाउचर्स पर करवाये गये हस्ताक्षर के सम्बन्ध में क्रेडिट कार्ड बाउचर्स की फोटोप्रतियां प्रदर्श डबल्यू. 8 लगायत डबल्यू. 124 प्रस्तुत की हैं। उक्त दस्तावेजात के सम्बन्ध में प्रार्थी ने अपनी जिरह में स्वीकार किया है कि इस साक्षी ने जो बाउचर्स पेश किये हैं, इसने इन्हीं दिनों में काम किया है, केवल रविवार को छोड़ा गया था। सम्प्रेषित निर्देश/रेफ्रेन्स में प्रार्थी को सेवा से निष्कासित किये जाने की तिथि 21/8/91 अंकित है, अतः प्रार्थी को हस्तगत मामले में उक्त सेवा समाप्ति की तिथि से ठीक पूर्व के 12 कलेण्डर माह की अवधि, अर्थात् दि. 21/8/90 से 20/8/91 तक की अवधि में अप्रार्थी के नियोजन में निरन्तर 240 दिन कार्य किये जाने का तथ्य प्रमाणित करना था। इस सम्बन्ध में प्रार्थी की ओर से व्यक्त किया गया है कि उसके द्वारा जो बाउचर्स पेश किये गये हैं, उसने उन्हीं दिनों में काम किया था, केवल रविवार छोड़े थे। इन बाउचर्स के अवलोकन से प्रकट होता है कि बाउचर्स प्रदर्श डबल्यू.8 लगायत डबल्यू.15 दि.17/12/90 के हैं, इसके उपरान्त प्रदर्श डबल्यू. 16 लगायत डबल्यू. 30 दि. 1/1/91 के हैं, प्रदर्श डबल्यू.31 लगायत डबल्यू.40 दिनांक 1/2/91 के हैं, प्रदर्श डबल्यू.41 व डबल्यू.42 दि. 15/2/91 के हैं, प्रदर्श डबल्यू.43 लगायत डबल्यू.52 दि.5/3/91 के हैं, प्रदर्श डबल्यू.53 लगायत डबल्यू.55 दि.13/3/91 के हैं, प्रदर्श डबल्यू.56 लगायत डबल्यू.58 दि.18/3/91 के हैं, प्रदर्श डबल्यू.59 दि.19/3/91 का है, प्रदर्श डबल्यू.60 दि.30/3/91 का है, प्रदर्श डबल्यू.61 लगायत डबल्यू.65 दि.3/4/91 के हैं, प्रदर्श डबल्यू.66 लगायत डबल्यू.69 दि.11/4/91 के हैं, प्रदर्श डबल्यू.70 लगायत डबल्यू. 75 दि.24/4/91 के हैं, प्रदर्श डबल्यू.76 व डबल्यू.77 दि.30/4/91 के हैं, प्रदर्श डबल्यू.78 दि.2/5/91 का है, प्रदर्श डबल्यू.79 लगायत डबल्यू.83 दि.11/5/91 के हैं, प्रदर्श डबल्यू.84 लगायत डबल्यू.91 दि.29/5/91 के हैं, प्रदर्श डबल्यू.92 लगायत डबल्यू.93 दि.4/6/91 के हैं, प्रदर्श डबल्यू.94 लगायत डबल्यू.97 दि.10/6/91 के हैं, प्रदर्श डबल्यू.98 लगायत डबल्यू.102 दि.26/6/91 के हैं, प्रदर्श डबल्यू.103 लगायत डबल्यू.106 दि.2/7/91 के हैं, प्रदर्श डबल्यू.107 लगायत डबल्यू.109 दि.8/7/91 के हैं, प्रदर्श डबल्यू.110 लगायत डबल्यू.115 दि.17/7/91 के हैं, प्रदर्श डबल्यू.116 लगायत डबल्यू.120 दि.26/7/91 के हैं, प्रदर्श डबल्यू.121 व डबल्यू.122 दि.27/7/91 के हैं तथा प्रदर्श डबल्यू.123 व डबल्यू.124 दि.30/7/91 के हैं। इसके अतिरिक्त प्रदर्श डबल्यू.98 लगायत डबल्यू.102 जो दि.26/6/91 के हैं, के अनुसार किसी रामकल्याण नामक व्यक्ति को भुगतान किये जाने का उल्लेख है। प्रदर्श डबल्यू. 8 लगायत डबल्यू. 15 दि. 17/12/90 के हैं, प्रदर्श डबल्यू.16 लगायत डबल्यू.30 दि.1/1/91 के हैं, प्रदर्श डबल्यू.31 लगायत डबल्यू.40 दि.1/2/91 के हैं, प्रदर्श डबल्यू.43 लगायत डबल्यू.52 दि.5/3/91 के हैं। इस प्रकार एक ही दिनांक के कई क्रेडिट कार्ड बाउचर्स पेश किये गये हैं जिनके आधार पर प्रार्थी के कार्यदिवसों की सही गणना नहीं मानी जा सकती। इसी प्रकार प्रार्थी द्वारा जो अन्य क्रेडिट कार्ड बाउचर्स पेश किये गये हैं, उनसे निरन्तर दिनाकों में भुगतान किया जाना प्रकट नहीं होता है। इस प्रकार उक्त दस्तावेजात से प्रार्थी का अन्तराल पर कार्य किया जाना प्रकट होता है, अर्थात् सेवा समाप्ति की तिथि 21/8/91 से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन कार्य

किये जाने का तथ्य प्रमाणित नहीं होता है। यहाँ तक कि उक्त दस्तावेजात से प्रार्थी को निरन्तर 240 दिन का भुगतान किये जाने का तथ्य भी प्रमाणित नहीं होता है। स्वयं प्रार्थी ने अपनी जिरह में इस तथ्य को स्वीकार किया है कि इसका कार्य निश्चित नहीं था, जो भी काम बताया जाता था वह वही करता था। यद्यपि यह साक्षी अपनी जिरह में विद्वान प्रतिनिधि अप्रार्थी द्वारा दिये गये इस सुझाव को गलत होना व्यक्त करता है कि इसने दि.30/11/90 से 21/8/91 तक कुल 212 दिन ही कार्य किया हो, बल्कि यह साक्षी 240 दिन कार्य किया जाना भी व्यक्त करता है, परन्तु प्रार्थी की ओर से प्रस्तुत की गयी मौखिक एवं प्रलेखीय साक्ष्य से प्रार्थी द्वारा अप्रार्थी के नियोजन में सेवा समाप्ति की तिथि 21/8/91 से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन कार्य किये जाने का तथ्य प्रमाणित नहीं होता है। जबकि दूसरी ओर अप्रार्थी की ओर से प्रस्तुत साक्षी गजेन्द्र कुमार चोरसिया ने प्रार्थी द्वारा दि.30/11/90 से 20/8/91 तक केजुअल जोब वर्क का काम किया जाना व्यक्त किया है व उक्त अवधि में से कुछ विशिष्ट अवधि के लिए प्रार्थी द्वारा जोब वर्क का काम किया जाना व्यक्त करते हुए केवल मात्र 212 दिन ही काम किया जाना व्यक्त किया है। इस प्रकार प्रार्थी पत्रावली पर उपलब्ध मौखिक एवं दस्तावेजी साक्ष्य के आधार पर माननीय उच्चतम न्यायालय के उक्त उद्दृत न्यायदृष्टांत “2006(2)एसीजे 408(एससी)—सुरेन्द्रनगर डिस्ट्रिक्ट पंचायत एवं अन्य बनाम गंगाबेन लालजी भाई एवं अन्य तथा 2006(108) एफएलआर 213(एससी)—आर.एम.येल्दटी बनाम सहायक अधिशासी अभियन्ता” में प्रतिपादित सिद्धांत की रोशनी में प्रार्थी, अप्रार्थी नियोजक के नियोजन में सेवा समाप्ति की तिथि 21/8/91 से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन का कार्य किये जाने के तथ्य को साबित किये जाने में पूर्णतया असफल रहा है।

12. यद्यपि प्रार्थी की ओर से न्यायाधिकरण के समक्ष एक तर्क यह रखा गया है कि प्रार्थी के कार्य से सम्बन्धित समस्त रेकार्ड अप्रार्थी के कब्जे/नियंत्रण में मौजूद था, परन्तु अप्रार्थी द्वारा उक्त समस्त रेकार्ड न्यायालय के समक्ष प्रस्तुत नहीं किया गया है, अतः प्रकरण में अप्रार्थी के विरुद्ध विपरीत उपधारणा ली जाकर प्रकरण का निस्तारण किया जावे, परन्तु हस्तगत मामले में प्रार्थी, माननीय उच्चतम न्यायालय के उक्त उद्दृत न्यायदृष्टांत “2006(2)एसीजे 408(एससी)—सुरेन्द्रनगर डिस्ट्रिक्ट पंचायत एवं अन्य बनाम गंगाबेन लालजी भाई एवं अन्य तथा 2006(108) एफएलआर 213(एससी)—आर.एम.येल्दटी बनाम सहायक अधिशासी अभियन्ता” में प्रतिपादित सिद्धांत की रोशनी में अप्रार्थी नियोजक के नियोजन में सेवा समाप्ति की तिथि 21/8/91 से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन का कार्य किये जाने के तथ्य को साबित किये जाने में पूर्णतया असफल रहा है। इसके अतिरिक्त माननीय उच्चतम न्यायालय द्वारा न्यायदृष्टांत “2004 डीएनजे 857 (एससी)—म्यूनिसिपल कॉरपोरेशन फरीदाबाद बनाम श्री निवास” में यह अभिमत प्रकट किया गया है कि जहाँ कर्मकार/श्रमिक यह साबित करने में असफल रहा है कि उसने सेवा समाप्ति के पूर्ववर्ती 12 कलेण्डर माह में 240 दिन तक लगातार कार्य किया है व न्यायाधिकरण द्वारा यह निष्कर्ष निकाला गया था कि कर्मकार/श्रमिक द्वारा 184 दिन तक कार्य किया गया है, परन्तु माननीय उच्च न्यायालय ने श्रमिक के पक्ष में उपधारणा लेते हुए श्रमिक के पक्ष में सेवा की बहाली का आदेश पारित किया। उपरोक्त स्थिति में माननीय उच्चतम न्यायालय द्वारा यह अभिमत प्रकट किया गया कि उच्च न्यायालय द्वारा अप्रार्थी प्रबन्धन के विरुद्ध अभिलेख प्रस्तुत नहीं किये जाने की जो उपधारणा ली गयी वह न्यायसंगत नहीं थी, साथ ही यह भी अभिमत प्रकट किया गया कि साक्ष्य अधिनियम के समस्त प्रावधान श्रम एवं औद्योगिक सम्बन्धी मामलों पर लागू नहीं होते हैं। इस सम्बन्ध में माननीय उच्चतम न्यायालय के इस न्यायनिर्णय का मुख्य शीर्षक निम्न प्रकार से है:-

"Industrial Disputes Act, 1947-Sec. 25-F & 25-B- Evidence Act, 1872-- Sec. 114 (f)-Retrenchment-Applicability-- Respondent failed to prove that he had worked for 240 days in preceding year- Tribunal held that appellant-workman had worked for 184 days- However, High Court adverted to presumption in favour of workman and directed reinstatement- Held, High Court was not justified in invoking adverse presumption against appellant- Provisions of Evidence Act per se not attracted to industrial adjudication."

13. इसी प्रकार माननीय राजस्थान उच्च न्यायालय द्वारा न्यायदृष्टांत “2007(3) आरएलडबल्यू 1999(राज.)—चेयरमेन, म्यूनिसिपल बोर्ड बनाम महावीरप्रसाद शर्मा एवं अन्य” में यह अभिमत प्रकट किया गया है कि स्पष्ट साक्ष्य से यह साबित करने का सबूत भार कर्मकार पर रहता है कि उसने अन्तिम कलेण्डर वर्ष में 240 दिन कार्य किया था। कर्मकार का मात्र शपथ-पत्र प्रस्तुत करना ही पर्याप्त नहीं है व नियोजक/प्रबन्धक द्वारा अभिलेख पेश नहीं करने से प्रबन्धक के विरुद्ध प्रतिकूल अनुमान निकालने की न्यायालय को अनुमति नहीं होगी।

14. हस्तगत मामले में भी प्रार्थी, अप्रार्थी के नियोजन में सेवा समाप्ति की तिथि 21/8/91 से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन कार्य किये जाने के तथ्य को साबित करने में पूर्णतया असफल रहा है, इन परिस्थितियों में हम माननीय उच्चतम न्यायालय एवं माननीय उच्च न्यायालय के उक्त उद्दृत “श्री निवास” एवं “महावीर प्रसाद शर्मा” वाले न्यायदृष्टांतों का अवलम्ब लेते हुए अप्रार्थी के विरुद्ध विपरीत उपधारणा लिया जाना न्यायोचित नहीं पाते हैं।

15. यद्यपि प्रार्थी की ओर से न्यायाधिकरण के समक्ष अपना पक्ष रखा गया है कि अप्रार्थी द्वारा उसे सेवा से निष्कासित कर दिया गया है। इस सम्बन्ध में सम्प्रेषित रेफ्रेन्स में प्राप्ति को तथाकथित रूप से सेवा से निष्कासित किये जाने की तिथि 21/8/91 है। प्रार्थी ने अपने क्लेम स्टेटमेंट में दि. 30/11/90 से 28/8/91 तक निरन्तर कार्य करते हुए 240 दिन से अधिक समय तक कार्य किया जाना व्यक्त किया है। प्रार्थी श्रमिक की ओर से प्रस्तुत किये गये दस्तावेज प्रदर्श डबल्यू.1 व डबल्यू.2 में प्रार्थी को तथाकथित सेवा से निष्कासित किये जाने की तिथि 22/8/91 अंकित है। प्रार्थी की ओर से ऐसी कोई दस्तावेजी साक्ष्य अथवा अप्रार्थी द्वारा उसे सेवा से निष्कासित किये जाने के सम्बन्ध में पारित कोई आदेश न्यायाधिकरण के समक्ष प्रस्तुत नहीं किया गया है, ना ही ऐसी कोई मौखिक साक्ष्य प्रस्तुत की गयी है जिससे यह प्रकट होता हो कि प्रार्थी श्रमिक ने स्वयं को सेवा से निष्कासित किये जाने के उपरान्त अप्रार्थी विभाग में अपनी उपस्थिति दर्ज करवानी चाही हो, परन्तु अप्रार्थी द्वारा उसे ऐसा किये जाने से निषेध किया गया हो। इन परिस्थितियों में हम माननीय राज. उच्च न्यायालय के न्यायदृष्टांत “आरएलडबल्यू 2001(1) राज. 238—नरेन्द्र सिंह सोलंकी बनाम रॉ एण्ड फिनिशिंग प्रोडक्शन एवं अन्य” में प्रतिपादित सिद्धांत की रोशनी में प्रार्थी श्रमिक का मामला छंटनी का होना प्रमाणित नहीं मानते हैं।

16. प्रार्थी श्रमिक की ओर से अपनी लिखित बहस में विद्वान प्रतिनिधि की ओर से व्यक्त किया गया है कि अप्रार्थी के गवाह गजेन्द्र कुमार चोरसिया ने अपने शपथ-पत्र में कथन किया है कि प्रार्थी ने उनके यहाँ 212 दिन कार्य किया है व माननीय उच्चतम न्यायालय के न्यायनिर्णय "1985(51)एफएलआर 481(एससी)— वर्कमेन आफ अमेरिकन एक्सप्रेस इन्टरनेशनल बैंकिंग कोर. बनाम मैनेजमेन्ट आफ अमेरिकन एक्सप्रेस इन्टरनेशनल बैंकिंग कोर." के पैरा 5 व 7 में 240 दिन कार्य करने की गणना में साप्ताहिक अवकाश भी शामिल माने हैं, अर्थात् 240 दिन की गणना करने में श्रमिक की उपस्थित दिवसों में साप्ताहिक अवकाश को भी जोड़ा जायेगा। इस न्यायनिर्णय के अनुसार हस्तगत मामले में नियोजक के यहाँ प्रार्थी ने 240 दिन कार्य कर लिया है, अतः नियोजक ने जो 212 दिन बताये हैं, उनमें साप्ताहिक अवकाश जोड़ने पर प्रार्थी श्रमिक के 240 दिन पूर्ण हो जाते हैं। अतः उपरोक्त अनुसार ही प्रार्थी के कार्यदिवसों की गणना किये जाने की प्रार्थना न्यायाधिकरण से की गयी है। इस सम्बन्ध में प्रार्थी की ओर से प्रस्तुत किये गये उक्त न्यायदृष्टांत के अवलोकन से प्रकट होता है कि उक्त न्यायदृष्टांत में माननीय उच्चतम न्यायालय द्वारा पृष्ठ सं. 481 पर निम्न अभिमत प्रकट किया गया है:—

"Industrial Disputes Act, Secs. 25-F, 25-B (2) (a)- Retrenchment Compensation- Conditions for eligibility of- Expression "actually worked under the employer"- Meaning of- Sundays and other paid holidays to be treated as days "actually worked under the employer."

Section 25-F of the Industrial Disputes Act is plainly intended to give relief to retrenched workmen. The expression which we are required to construe is 'actually worked under the employer'. This expression, according to us, cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The workman Shri B. Ravchandran is therefore directed to be reinstated in service with full back wages."

17. इस प्रकार उक्त न्यायदृष्टांत में माननीय उच्चतम न्यायालय द्वारा यह स्थिति स्पष्ट की गयी है कि धारा 25-बी(2)(ए) के उद्देश्य से 'वास्तव में नियोजक के अधीन कार्य किये जाने का अभिप्राय: रविवार एवं भुगतान अवकाश दिवसों को भी 'वास्तविक कार्य दिवस' माना जाना चाहिए।" इसी न्यायदृष्टांत में यह मत भी व्यक्त किया गया है कि उपरोक्त दिवसों से यह भी अभिप्राय: समझा जाना चाहिए कि श्रमिक द्वारा वास्तव में नियोजक के यहाँ कार्य करने के दिवस व वे दिवस जिनका श्रमिक को स्थायी-आदेशों अथवा संविदा की सेवा-शर्तों के अनुसार प्रत्यक्ष या परोक्ष रूप से मजदूरी का भुगतान किया गया हो। परन्तु हस्तगत मामले में प्रार्थी द्वारा ऐसा कोई दस्तावेज यथा-स्थायी-आदेश या संविदा की सेवा-शर्तें प्रस्तुत नहीं की गयी है जिससे कि प्रार्थी श्रमिक को रविवार एवं भुगतान अवकाश दिवसों की मजदूरी/वेतन का भी भुगतान किया जाना प्रकट होता हो। इन परिस्थितियों में हम प्रार्थी श्रमिक की ओर से प्रस्तुत उक्त तर्क में कोई बल नहीं पाते हैं व उपरोक्त प्रस्तुत न्यायदृष्टांत प्रार्थी श्रमिक को कोई लाभ नहीं पहुँचाता है। इसी सम्बन्ध में प्रार्थी श्रमिक की ओर से प्रस्तुत न्यायदृष्टांत "2002(95)एफएलआर 595(राज.)-स्टेट आफ राज. बनाम महेन्द्र जोशी एवं अन्य" भी प्रार्थी श्रमिक को कोई लाभ नहीं पहुँचाता है।

18. प्रार्थी श्रमिक की ओर से न्यायदृष्टांत "1998(III)एलएलजे 714(एससी)-रतन सिंह बनाम यूनियन आफ इण्डिया, 2010 एससीएलजे पृष्ठ 335-अनूप शर्मा बनाम एकजी.इंजीनियर, पब्लिक हेल्थ डिवि.नं.1, पानीपत(हरियाणा), 1977 डबल्यूएलएन(यूसी)569-पारुमल बनाम स्टेट आफ राजस्थान, 2005(8)आरडीडी 3280(राज.)-पृथ्वीराज बनाम लेबर कोर्ट, जोधपुर एवं अन्य, 2007(3)सीडीआर 1923 (राज.)-असि.इंजीनियर, डिस्ट्रीब्यूटरी सब डिविजन राईट मेन केनाल, चम्बल प्रोजेक्ट अन्ता कोटा बनाम जज, लेबर कोर्ट, कोटा एवं अन्य, 2015(145) एफएलआर 184(एससी)-मेकिनन मेकिनज एण्ड कंपनी लि. बनाम मेकिनन एम्प्लोईज यूनियन तथा 1978(37)एफएलआर 240(एससी)-हिन्दुस्थान टिन वर्क्स प्रा.लि. बनाम एम्प्लोईज आफ मै.हिन्दुस्थान टिन वर्क्स प्रा.लि." पेश किये गये हैं, परन्तु हस्तगत मामले में प्रार्थी, अप्रार्थी के नियोजन में सेवा समाप्ति की तिथि से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन कार्य किये जाने के तथ्य को साबित करने में असफल रहा है। इसके अतिरिक्त प्रार्थी, अप्रार्थी द्वारा औ.वि.अधिनियम की धारा 25-एफ के प्रावधान की अवहेलना कर स्वयं की अवैध रूप से छंटनी किये जाने के तथ्य को भी साबित करने में असफल रहा है, अतः उक्त सभी न्यायदृष्टांत प्रार्थी श्रमिक को कोई लाभ नहीं पहुँचाते हैं।

19. प्रार्थी श्रमिक की ओर से न्यायदृष्टांत "1996(II)एलएलजे 316(राज.)-वीफ इंजीनियर, इरीगेशन बनाम कमलेश एवं अन्य तथा" पेश किया गया है। उक्त न्यायदृष्टांत में वर्णित तथ्यों के मुताबिक कर्मकार को औ.वि. अधिनियम की धारा 25-एफ एवं धारा 25-बी के अन्तर्गत लाभ प्राप्त करने हेतु कर्मकार द्वारा सेवा समाप्ति की तिथि से पूर्ववर्ती कलेण्डर वर्ष में 240 दिन कार्य किये जाने की आवश्यकता नहीं होना प्रकट किया गया है परन्तु माननीय उच्चतम न्यायालय के उक्त उद्धृत न्यायदृष्टांत "आर.एम.येल्दटी बनाम सहायक अधिशासी अभियन्ता-2006 (108) एफएलआर 213(एससी)" में प्रतिपादित सिद्धांत की रोशनी में प्रार्थी श्रमिक को प्रस्तुत उक्त न्यायदृष्टांत से कोई लाभ नहीं पहुँचाता है।

20. प्रार्थी श्रमिक की ओर से न्यायदृष्टांत "2010(124) एफएलआर 285(राज.)-राज. एग्रीकल्चरल यूनिवर्सिटी एवं अन्य बनाम इण्ड. ट्रिब्यूनल एवं लेबर कोर्ट व अन्य" पेश किया गया है। उक्त न्यायदृष्टांत में वर्णित तथ्यों के मुताबिक कर्मकार वर्ष 1984 से नियोजक के नियोजन में होना प्रकट होता है तथा नियोजक द्वारा कर्मकार के निरन्तर सेवा में होने के तथ्य को चुनौती नहीं दी गयी थी, परन्तु हस्तगत मामले में अप्रार्थी की ओर से प्रार्थी के द्वारा निरन्तर 240 दिन कार्य किये जाने के तथ्य से इन्कार किया गया है, अतः यह न्यायदृष्टांत भी प्रार्थी श्रमिक को कोई लाभ नहीं पहुँचाता है।

21. प्रार्थी श्रमिक की ओर से न्यायदृष्टांत "2013(139)एफएलआर 541(एससी)—दीपाली गुण्डु सुरवेस बनाम कान्ति जूनियर अध्यापक एवं अन्य" पेश किया गया है। उक्त न्यायदृष्टांत में वर्णित तथ्यों के मुताबिक यदि किसी न्यायालय अथवा अन्य सक्षम न्यायिक/अर्द्धन्यायिक मंच/निकाय द्वारा कर्मकार के विरुद्ध की गयी कार्यवाही को अवैधानिक अथवा नैसर्गिक न्याय सिद्धांतों के विपरीत पाया जाता है तो ऐसी परिस्थिति में कर्मकार पुनः सेवा में नियोजित होने योग्य है, परन्तु हस्तगत मामले में ऐसी स्थिति नहीं है, अतः उक्त न्यायदृष्टांत भी प्रार्थी श्रमिक को कोई लाभ नहीं पहुँचाता है।

22. प्रार्थी श्रमिक की ओर से न्यायदृष्टांत "1976 एससीएलजे 85—स्टेट बैंक आफ इण्डिया बनाम एन.सुन्दरमनी" पेश किया गया है, परन्तु हस्तगत मामले में प्रार्थी ने स्वयं अपने क्लेम स्टेटमेन्ट में अप्रार्थीगण से नोटिस पे प्राप्त करना स्वीकार किया है। इसके अतिरिक्त प्रार्थी किसी ठोस साक्ष्य के आधार पर अप्रार्थीगण के नियोजन में सेवा समाप्ति की तिथि से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन कार्य किये जाने के तथ्य को माननीय उच्चतम न्यायालय के उक्त उद्धृत न्यायदृष्टांत "आर.एम.येल्टी बनाम सहायक अधिशासी अभियन्ता-2006 (108) एफएलआर 213(एससी)" में प्रतिपादित सिद्धांत की रोशनी में साबित करने में पूर्णतया असफल रहा है। अतः प्रार्थी श्रमिक को प्रस्तुत उक्त न्यायदृष्टांत से कोई लाभ नहीं पहुँचाता है।

23. प्रार्थी श्रमिक की ओर से न्यायदृष्टांत "2010(124) एफएलआर 700(एससी)—हरजिन्दर सिंह बनाम पंजाब स्टेट वेयरहाउसिंग कोर. तथा 2015 (144) एफएलआर 837(एससी)—जसमेर सिंह बनाम स्टेट ऑफ हरियाणा एवं अन्य" पेश किये गये हैं, इन सभी प्रस्तुत न्यायदृष्टांतों में मामला अवैध सेवा से निष्कासन का था, परन्तु हस्तगत मामला अवैध सेवा से निष्कासन का होना नहीं पाया गया, अतः प्रस्तुत उक्त सभी न्यायदृष्टांत प्रार्थी श्रमिक को कोई लाभ नहीं पहुँचाते हैं।

24. इस प्रकार मामले में सम्पूर्ण साक्ष्य के विवेचन से प्रकट होता है कि प्रार्थी ने स्वयं को अप्रार्थी के नियोजन में दि.30/11/90 से चतुर्थ श्रेणी कर्मचारी के पद पर सेवामें नियोजित होना अपने क्लेम स्टेटमेन्ट में व्यक्त किया है तथा पिछले सम्पूर्ण वेतन व समस्त हितलाभों सहित उक्त पद पर बहाल किये जाने की प्रार्थना न्यायाधिकरण से की है, परन्तु प्रार्थी स्वयं चपरासी के पद पर अप्रार्थी द्वारा सेवामें नियोजित किये जाने के सम्बन्ध में कोई नियुक्ति आदेश आदि प्रस्तुत नहीं किया है। अप्रार्थी ने प्रार्थी द्वारा स्वयं के यहाँ केजुअल जोब वर्क एक सीमित अवधि के लिए किया जाना व्यक्त किया है व उक्त अवधि के समाप्त होने पर प्रार्थी घासीलाल की नियुक्ति स्वतः ही समाप्त होना व्यक्त किया है। इस प्रकार प्रार्थी, अप्रार्थी द्वारा स्वयं को चपरासी के नियमित पद पर कोई निर्धारित प्रक्रिया अपनाकर चपरासी के पद पर भरती किये जाने के तथ्य को साबित करने में असफल रहा है। प्रार्थी, अप्रार्थी के नियोजन में सेवा समाप्ति की तिथि 21/8/91 से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन कार्य किये जाने के तथ्य को भी साबित किये जाने में पूर्णतया असफल पाया गया है। प्रार्थी का मामला छंटनी का होना भी प्रमाणित नहीं है। अतः इन समस्त परिस्थितियों में प्रार्थी श्रमिक अधिनियम की धारा 25—एफ, जी एवं एन के प्रावधानान्तर्गत कोई संरक्षण प्राप्त करने का अधिकारी नहीं होने से अप्रार्थी नियोजक के विरुद्ध किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं होना पाया जाता है एवं सम्प्रेषित निर्देश/रेफ्रेन्स भी इसी अनुरूप उत्तरित होने योग्य है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रासांगिक आदेश दिनांक 12/3/93 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स विवाद को इसी अनुरूप उत्तरित किया जाता है कि प्रार्थी श्रमिक घासीलाल स्वयं को चपरासी के नियमित पद पर कोई निर्धारित प्रक्रिया अपनाकर उक्त पद पर भर्ती किये जाने के तथ्य को साबित किये जाने में असफल रहा है। प्रार्थी श्रमिक, अप्रार्थी नियोजक के नियोजन में सेवा समाप्ति की तिथि 21/8/91 से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन कार्य किये जाने के तथ्य को साबित किये जाने में पूर्णतया असफल रहा है। प्रार्थी का मामला छंटनी का होना भी प्रमाणित नहीं है। अतः इन समस्त परिस्थितियों में प्रार्थी श्रमिक, अप्रार्थी नियोजक के विरुद्ध किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

श्रीमती अनिता शर्मा, न्यायाधीश

नई दिल्ली, 18 नवम्बर, 2016

**का.आ. 2291.**—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 दिसम्बर, 2016 को उस तारीख के रूप में नियत करती है, जिसे उक्त अधिनियम के अध्याय IV (धारा 44 व 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) तथा अध्याय V और VI [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी हैं] के उपबन्ध पूर्व कार्यान्वित क्षेत्रों के अतिरिक्त संपूर्ण आंध्र प्रदेश राज्य के निम्नलिखित जिलों में प्रवृत्त होंगे, नामतः :—

क्र.सं.	जिले का नाम
1.	चित्तूर
2.	अनंतपुरम
3.	कडप्पा
4.	कर्नूल

[सं. एस-38013/42/2016—एस.एस. I]

अजय मलिक, अवर सचिव

New Delhi, the 18th November, 2016

**S.O. 2291.**—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st December, 2016 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following Districts in the State of Andhra Pradesh namely :—

Sl. No.	Name of the Districts
1.	Chittor
2.	Ananthapuram
3.	Kadapa
4.	Kurnool

[No. S-38013/42/2016-S.S. I]

AJAY MALIK, Under Secy.

नई दिल्ली, 18 नवम्बर, 2016

**का.आ. 2292.**—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथासंशोधित, 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, श्रम और रोजगार मंत्रालय के प्रशासकीय नियंत्रणाधीन निम्नलिखित कार्यालयों को, जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्वारा अधिसूचित करती है :

1. कर्मचारी राज्य बीमा निगम आदर्श अस्पताल, जयपुर
2. कर्मचारी राज्य बीमा निगम आदर्श अस्पताल, गुडगांव
3. कर्मचारी राज्य बीमा निगम शाखा कार्यालय, बोकारो, झारखण्ड
4. कर्मचारी राज्य बीमा निगम शाखा कार्यालय, धनबाद, झारखण्ड
5. कर्मचारी राज्य बीमा निगम शाखा कार्यालय, गोलमुरी, झारखण्ड
6. कर्मचारी राज्य बीमा निगम शाखा कार्यालय, आदित्यपुर, झारखण्ड

[सं. ई-11017/1/2006-रा.भा.नी.]

देवेन्द्र सिंह, आर्थिक सलाहकार

New Delhi, the 18th November, 2016

**S.O. 2292.**—In pursuance of Sub-Rule (4) of Rule 10 of the Official Languages (Use for official purposes of the Union) Rules, 1976 (as amended, 1987) the Central Government hereby notifies following offices under the administrative control of the Ministry of Labour and Employment, more than 80% Staff whereof have acquired working knowledge of Hindi :

1. ESIC Model Hospital, Jaipur
2. ESIC Model Hospital, Gurgaon
3. ESIC Branch Office, Bokaro, Jharkhand
4. ESIC Branch Office, Dhanbad, Jharkhand
5. ESIC Branch Office, Golmuri, Jharkhand
6. ESIC Branch Office, Adityapur, Jharkhand

[No. E-11017/1/2006-RBN]

DEVENDER SINGH, Economic Adviser

नई दिल्ली, 21 नवम्बर, 2016

**का.आ. 2293.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स राधा कंस्ट्रक्शन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 78/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-29012/16/2014-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 21st November, 2016

**S.O. 2293.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 78/2014) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Radha Construction and their workman, which was received by the Central Government on 16.11.2016.

[No. L-29012/16/2014-IR (M)]

RAJESH KUMAR, Under Secy.

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/78/14

PRESIDING OFFICER : SHRI R. B. PATLE

Shri Mohan Lal S/o Siyaram,  
At Room No.05, Dabarapara,  
Bhilai,  
Distt. Durg (CG)

...Workman/Union

#### Versus

The Proprietor,  
M/s. Radha Construction,  
Shop No. 705, "C" Market,  
Sector-6, Bhilai,  
Distt. Durg (CG)

...Management

### AWARD

Passed on this 17<sup>th</sup> day of October 2016

1. As per letter dated 9-10-14 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-29012/16/2014-IR(M). The dispute under reference relates to:

"Whether the action of M/s. Radha Construction, contractor engaged at Bhilai Steel Plant, Bhilai in terminating the services of Shri Mohan Lal S/o Siyaram w.e.f. Sept.2012 is legal and justified? If not, what relief the workman is entitled to?"

2. Ist party workman is challenging his termination from management in the dispute under reference . Even after issuing notices, the workman did not participate in the proceeding.

3. IInd party management also not filed Written Statement. From conduct of the parties, it is clear that the parties are not pursuing or participating in the dispute.

4. In the result, award is passed as under:-

"Reference is disposed off as No Dispute Award."

R. B. PATLE, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2016

**का.आ. 2294.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स नेशनल इंस्टीच्यूट ऑफ रॉक मैकेनिक (एनआईआरएम) एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 22/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-28011/1/2015-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 21st November, 2016

**S.O. 2294.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2015) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. National Institute of Rock Mechanic (NIRM) and their workman, which was received by the Central Government on 16.11.2016.

[No. L-28011/1/2015-IR (M)]

RAJESH KUMAR, Under Secy.

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 28/09/2016

**PRESENT :** Shri V. S. RAVI, Presiding Officer

**C R No. 22/2015**

#### I Party

Sh. S Balan,  
C/o Karnataka General Labour Union,  
50, 6/3, H. Chandra Reddy Layout,  
Ejipura, BANGALORE-560047.

#### II Party

1. The Director,  
National Institute of Rock  
Mechanic(NIRM), Champion Reefs,  
K.G.F., BANGALORE-563117
2. The Contractor, Ex-Serviceman Association,  
BEML Nagar Post, K G F, BANGALORE-563115.

### AWARD

1. The Central Government vide Order No.L-28011/1/2015- IR(M) dated 08.06.2015 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

### SCHEDULE

“Whether the charter of demands dated 03.04.2014 raised by Karnataka General Labour Union for wage revision of the contract workmen of NIRM is valid? If so, what relief they are entitled to and whether the contractor or the principal employer is responsible for it?”

2. After the receipt of the reference, the matter has been registered on the file of this Tribunal and notices have been sent for both parties. None appeared for the Ist party and Ist party also called absent. Infact, on 23.08.2016 notice of hearings have been sent to the I party by RPAD through the Department of Posts, India. Still, no representation has been made on behalf of 1<sup>st</sup> party and also, 1<sup>st</sup> party is called, absent.

3. On perusal of records already on 25.08.2016 notices have been sent and, the said notices have been served to both the parties and the RPAD acknowledgment cards have been received by this Tribunal. Hence, it is found that inspite of giving sufficient and adequate chances by issuing notices of hearing to 1<sup>st</sup> party, the 1<sup>st</sup> party has not made any appearance. In such circumstances, the matter is posted for passing Award, after the perusal of entire records brought on record.

4. Further, from the above mentioned circumstances, it would be very much clear, in the present matter, that the 1<sup>st</sup> party has no interest to contest the present matter, inspite of the service of notices of hearing issued to the 1<sup>st</sup> party. It is for the 1<sup>st</sup> party to make out a case that 1<sup>st</sup> party is entitled to the above mentioned benefits and that the management has done a mistake by denying the said benefits. Further, on behalf of the 2<sup>nd</sup> party, Mr. A.N. Nagarajan, Registrar, of the 2<sup>nd</sup> Party, has appeared before this Tribunal and also reported that, the 2<sup>nd</sup> party has not violated any provisions of the Rules and also, already granted all the legitimate benefits to the 1<sup>st</sup> party and also, as per the provisions of law, the relevant benefits have been granted by the 2<sup>nd</sup> Party. Under the above mentioned special

circumstances and peculiar facts, this Tribunal is constrained to pass appropriate award, after the perusal of material available on record.

5. Since no appearance has been made and also claim statement has not been filed and further no case has been made out by I party and the present reference has only to be rejected for non-prosecution. Therefore, keeping in view the conduct of I party in, not appearing before this Tribunal, even though notices have been sent to the 1<sup>st</sup> party by way of RPAD and the conduct of 1<sup>st</sup> Party in not filing claim statement, in support of the said reference, it is crystal clear that the I party is no more interested in prosecuting the claim against II party. In the result and also in above mentioned facts and situations, it has to be held the present reference has to be rejected, for non prosecution and no useful purpose will be served in keeping the proceedings any more pending. Hence the following award.

#### AWARD

Reference is dismissed for non-prosecution.

(Dictated, transcribed, corrected and signed by me on 28<sup>th</sup> September, 2016)

V. S. RAVI, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2016

**का.आ. 2295.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सविथा कंस्ट्रक्शन एवं दो अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 23/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-30011/7/2014-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 21st November, 2016

**S.O. 2295.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2014) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Savitha Constructions and two others and their workman, which was received by the Central Government on 16.11.2016.

[No. L-30011/7/2014-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 3<sup>rd</sup> October, 2016

**PRESENT :** Shri V. S. RAVI, Presiding Officer

**C R No. 23/2014**

#### I Party

The President, MRPL-ONGC Karmachari Sangh,  
Near Cargo Gate, Opp. Oval Outlet, Bajpe Road,  
Katipalla, Mangalore-575030.

#### II Party

1. The Proprietor, Savitha Constructinons,  
Durga Nivas, Site No.21, 9th block,  
Katipalla, Mangalore-574149.
2. The Partner, Geo Tech Engineering Services,  
D-64, industrial Estate, Baikampady,  
Mangalore – 575011.
3. The Group General Manager, Mangalore  
Refinery & Petrochemicals Ltd., Kuthethoor  
Via Katipalla, Mangalore-575030

**AWARD**

1. The Central Government vide Order No.L-30011/7/2014- IR(M) dated 03.07.2014 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

**SCHEDULE**

“Whether the alleged improper decategorization of ten contract workers presently working with Savitha Constructions and earlier worked under Geo Tech Engineering Services contractors of MRPL is correct? If not, to what relief the contract workers of the said contractors are entitled to?”

2. After the receipt of the reference, the matter has been registered on the file of this Tribunal and notices have been sent for both parties. Notices served to both the parties, none appeared for the 1st party and 1st party also called absent. Infact, notice of hearing have been served to the 1st party by RPAD through the Department of Posts, India. Still, no representation has been made on behalf of 1st party and also Mr. Kartik, Sr. Executive of Admn Dept for 2nd Party of Sl. No.3 present and also reported that the matter has already been amicably settled.

3. On perusal of records already notices have been sent and, the said notices have been served to both the parties and the RPAD acknowledgment cards have been received by this Tribunal. Hence, it is found that inspite of giving sufficient and adequate chances by issuing notices of hearing to 1st party, the 1st party has not made any appearance. In such circumstances, the matter is posted for passing Award, after the perusal of entire records brought on record.

4. Further, from the above mentioned circumstances, it would be very much clear, in the present matter, that the 1st party has no interest to contest the present matter, inspite of the service of notices of hearing issued to the 1st party. It is for the 1st party to make out a case that 1st party is entitled to the above mentioned benefits and that the management has done a mistake by denying the said benefits. Further, on behalf of the 2nd party, Mr. Kartik, Sr. Executive of the 2nd Party, Sl. No. 3, has appeared before this Tribunal and also reported that, the 2nd party has not violated any provisions of the Rules and also, already the matter has been amicably settled. Under the above mentioned special circumstances and peculiar facts, this Tribunal is constrained to pass appropriate award, after the perusal of material available on record.

5. Since no appearance has been made and also claim statement has not been filed and further no case has been made out by I party and the present reference has only to be rejected for non-prosecution. Therefore, keeping in view the conduct of I party in, not appearing before this Tribunal, even though notices have been sent to the 1st party by way of RPAD and the conduct of 1st Party in not filing claim statement, in support of the said reference, it is crystal clear that the I party is no more interested in prosecuting the claim against II party. In the result and also in above mentioned facts and situations, it has to be held the present reference has to be rejected, for non prosecution and no useful purpose will be served in keeping the proceedings any more pending. Hence the following award.

**AWARD**

Reference is dismissed for non-prosecution.

(Dictated, transcribed, corrected and signed by me on 3rd October, 2016)

V. S. RAVI, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2016

**का.आ. 2296.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मधु इंजीनियरिंग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 28/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-29011/34/2013-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 21st November, 2016

**S.O. 2296.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2013) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the

management of M/s. Madhu Engineering and their workman, which was received by the Central Government on 16.11.2016.

[No. L-29011/34/2013-IR (M)]

RAJESH KUMAR, Under Secy.

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 14<sup>th</sup> October, 2016

**PRESENT :** Shri V. S. RAVI, Presiding Officer

**C R No. 28/2013**

#### I Party

The General Secretary,  
KIOCL Contract Workers Union  
(As per Corrigendum issued by  
Government of India, New Delhi,  
Dated : 04.08.2015 (INTUC), Office,  
Q.C. Lab Building, Panambur,  
Mangalore – 575010)

#### II Party

The Proprietor,  
M/s. Madhu Engineering, Krishna Kripa,  
Thodia Gudde, Door No.129/1(3),  
Kunjathbail Post, Kavoov,  
Mangalore - 575015

### AWARD

1. The Central Government vide Order No. L-29011/34/2013-IR(M) dated 27.06.2013 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

### SCHEDULE

“Whether the action of the management of M/s. Madhu Engineering, Contractors of KIOCL Ltd., in refusing to provide the benefits listed in the charter of demands (attached as Annexure-A) raised by the Union is legal and justified? If not, to what relief the workmen are entitled?”

2. After the receipt of the reference, the matter has been registered on the file of this Tribunal and notices have been sent for both parties. None appeared for the Ist party and Ist party also called absent. Infact, notice of hearings have been sent to the I party by RPAD in Transaction No. A RK326885885 IN, Dated 20.09.2016 through the Department of Posts, India and also acknowledgment received regarding the receipt of the notice by the I Party. Still, no representation has been made on behalf of I party and also, I party is called, absent.

3. On perusal of records already notices have been sent and, the said notices have been served to both the parties and the RPAD acknowledgment cards have been received by this Tribunal. Hence, it is found that inspite of giving sufficient and adequate chances by issuing notices of hearing to I party, the I party has not made any appearance. In such circumstances, the matter is posted for passing Award, after the perusal of entire records brought on record.

4. Further, from the above mentioned circumstances, it would be very much clear, in the present matter, that the I party has no interest to contest the present matter, inspite of the service of notices of hearing to the I party. It is for the I party to make out a case that I party is entitled to the above mentioned benefits and that the management has done a mistake by denying the said benefits. Further, on behalf of the 2nd party, Sri. V.S. Naik, Advocate of the 2nd Party, reported that the 2nd party has not violated any provisions of the Rules and also, already granted all the legitimate benefits to the I party and also, as per the provisions of law, the relevant benefits have been granted by the 2nd Party. Under the above mentioned special circumstances and peculiar facts, this Tribunal is constrained to pass appropriate award, after the perusal of materials available on record.

5. Since no appearance has been made and also claim statement has not been filed and further no case has been made out by I party and the present reference has only to be rejected for non- prosecution. Therefore, keeping in view the conduct of I party in, not appearing before this Tribunal, even though notices have been sent to the I party by way of RPAD and the conduct of I Party in not filing claim statement, in support of the said reference, it is crystal clear that the I party is no more interested in prosecuting the claim against II party. In the result and also in above mentioned facts and situations, it is to be held the present reference has to be rejected, for non prosecution and no useful purpose will be served in keeping the proceedings any more pending. Hence the following award.

**AWARD**

Reference is dismissed for non-prosecution.

(Dictated, transcribed, corrected and signed by me on 14<sup>th</sup> October, 2016)

V. S. RAVI, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2016

**का.आ. 2297.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स श्री गंगादरप्पा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 29/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-29011/35/2013-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 21st November, 2016

**S.O. 2297.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2013) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Sri Gangadarappa and their workman, which was received by the Central Government on 16.11.2016.

[No. L-29011/35/2013-IR (M)]

RAJESH KUMAR, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
BANGALORE**

DATED : 14<sup>th</sup> October, 2016

**PRESENT :** Shri V. S. RAVI, Presiding Officer

**C R No. 29/2013**

**I Party**

The General Secretary,  
KIOCL Contract Workers Union  
KIOCL PP Site,  
Panambur, Mangalore – 575010

**II Party**

Sri. Gangadarappa G M,  
Contractor, House No. 2-146/25,  
Ambikanagar, Opp. Bombay Tyres,  
Kavoor PO,  
Mangalore - 575010

**AWARD**

1. The Central Government vide Order No.L-29011/35/2013-IR(M) dated 27.06.2013 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

**SCHEDULE**

“Whether the action of the management of M/s. Sri. Gangadarappa, Contractors of KIOCL Ltd., in refusing to provide the benefits listed in the charter of demands (attached as Annexure-A) raised by the Union is legal and justified? If not, to what relief the workmen are entitled?”

2. After the receipt of the reference, the matter has been registered on the file of this Tribunal and notices have been sent for both parties. None appeared for the Ist party and Ist party also called absent. Infact, notice of hearings have been sent to the I party by RPAD through the Department of Posts, India. Still, no representation has been made on behalf of I party and also, I party is called, absent.

3. On perusal of records already notices have been sent and, the said notices have been served to both the parties and the RPAD acknowledgment cards have been received by this Tribunal. Hence, it is found that inspite of giving sufficient and adequate chances by issuing notices of hearing to I party, the I party has not made any appearance. In such circumstances, the matter is posted for passing Award, after the perusal of entire records brought on record.

4. Further, from the above mentioned circumstances, it would be very much clear, in the present matter, that the I party has no interest to contest the present matter, inspite of the service of notices of hearing to the I party. It is for the I party to make out a case that I party is entitled to the above mentioned benefits and that the management has done a mistake by denying the said benefits. Further, on behalf of the II party, V.S. Naik, Advocate of the II Party, reported that the II party has not violated any provisions of the Rules and also, already granted all the legitimate benefits to the I party and also, as per the provisions of law, the relevant benefits have been granted by the II Party. Under the above mentioned special circumstances and peculiar facts, this Tribunal is constrained to pass appropriate award, after the perusal of materials available on record.

5. Since no appearance has been made and also claim statement has not been filed and further no case has been made out by I party and the present reference has only to be rejected for non-prosecution. Therefore, keeping in view the conduct of I party in, not appearing before this Tribunal, even though notices have been sent to the I party by way of RPAD and the conduct of I Party in not filing claim statement, in support of the said reference, it is crystal clear that the I party is no more interested in prosecuting the claim against II party. In the result and also in above mentioned facts and situations, it is to be held the present reference has to be rejected, for non prosecution and no useful purpose will be served in keeping the proceedings any more pending. Hence the following award.

#### AWARD

Reference is dismissed for non-prosecution.

(Dictated, transcribed, corrected and signed by me on 14<sup>th</sup> October, 2016)

V. S. RAVI, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2016

**का.आ. 2298.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ब्रह्मादेवा वेल्डर्स एण्ड फेवरीकेशनस के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 30/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-29011/36/2013-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 21st November, 2016

**S.O. 2298.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2013) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Brahmadeva Welders & Fabrications and their workman, which was received by the Central Government on 16.11.2016.

[No. L-29011/36/2013-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
BANGALORE**

DATED : 14<sup>th</sup> October, 2016

**PRESENT :** Shri V. S. RAVI, Presiding Officer

**C R No. 30/2013**

**I Party**

The General Secretary,  
KIOCL Contract Workers Union  
(INTUC), D.No. 1-95,  
Nagara Shety Compound,  
Panambur, Mangalore – 575010

**II Party**

Sri. Brahmadeva, Proprietor  
Brahmadeva Welders & Fabrications,  
D No. 1-95, Nagara Shetty Compound,  
Kuloor - Kavoor, Panjimogaru  
Mangalore - 575010

**AWARD**

1. The Central Government vide Order No.L-29011/36/2013-IR(M) dated 27.06.2013 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

**SCHEDULE**

“Whether the action of the management of M/s. Brahmadeva Welders & Fabrication, Contractors of KIOCL Ltd., in refusing to provide the benefits listed in the charter of demands (attached as Annexure-A) raised by the Union is legal and justified? If not, to what relief the workmen are entitled?”

2. After the receipt of the reference, the matter has been registered on the file of this Tribunal and notices have been sent for both parties. None appeared for the Ist party and Ist party also called absent. Infact, notice of hearings have been sent to the I party by RPAD through the Department of Posts, India. Still, no representation has been made on behalf of I party and also, I party is called, absent.

3. On perusal of records already notices have been sent and, the said notices have been served to both the parties and the RPAD acknowledgment cards have been received by this Tribunal. Hence, it is found that inspite of giving sufficient and adequate chances by issuing notices of hearing to I party, the I party has not made any appearance. In such circumstances, the matter is posted for passing Award, after the perusal of entire records brought on record.

4. Further, from the above mentioned circumstances, it would be very much clear, in the present matter, that the I party has no interest to contest the present matter, inspite of the service of notices of hearing to the I party. It is for the I party to make out a case that I party is entitled to the above mentioned benefits and that the management has done a mistake by denying the said benefits. Further, on behalf of the II party, V.S. Naik, Advocate of the II Party, reported that the II party has not violated any provisions of the Rules and also, already granted all the legitimate benefits to the I party and also, as per the provisions of law, the relevant benefits have been granted by the II Party. Under the above mentioned special circumstances and peculiar facts, this Tribunal is constrained to pass appropriate award, after the perusal of materials available on record.

5. Since no appearance has been made and also claim statement has not been filed and further no case has been made out by I party and the present reference has only to be rejected for non- prosecution. Therefore, keeping in view the conduct of I party in, not appearing before this Tribunal, even though notices have been sent to the I party by way of RPAD and the conduct of I Party in not filing claim statement, in support of the said reference, it is crystal clear that the I party is no more interested in prosecuting the claim against II party. In the result and also in above mentioned facts and situations, it is to be held the present reference has to be rejected, for non prosecution and no useful purpose will be served in keeping the proceedings any more pending. Hence the following award.

**AWARD**

Reference is dismissed for non-prosecution.

(Dictated, transcribed, corrected and signed by me on 3rd October, 2016)

V. S. RAVI, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2016

**का.आ. 2299.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रॉयलीन इंजीनियरिंग के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 31/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-29011/37/2013-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 21st November, 2016

**S.O. 2299.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2013) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Roylin Engineering and their workman, which was received by the Central Government on 16.11.2016.

[No. L-29011/37/2013-IR (M)]

RAJESH KUMAR, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
BANGALORE**

DATED : 14<sup>th</sup> October, 2016

**PRESENT :** Shri V S RAVI, Presiding Officer

**C R No. 31/2013**

**I Party**

The General Secretary,  
KIOCL Contract Workers Union  
(INTUC), Near Megine Mane,  
Panambur, Mangalore – 575010

**II Party**

Sri. Ronald D'Souza, Proprietor,  
M/s. Roylin Engineering, Near Megine Mane,  
Derebail, Konchandy,  
Mangalore.

**AWARD**

1. The Central Government vide Order No.L-29011/37/2013-IR(M) dated 27.06.2013 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

**SCHEDULE**

“Whether the action of the management of M/s. Roylin Engineering, Contractors of KIOCL Ltd., in refusing to provide the benefits listed in the charter of demands (attached as Annexure-A) raised by the Union is legal and justified? If not, to what relief the workmen are entitled?”

2. After the receipt of the reference, the matter has been registered on the file of this Tribunal and notices have been sent for both parties. None appeared for the Ist party and Ist party also called absent. Infact, notice of hearings have been sent to the I party by RPAD through the Department of Posts, India. Still, no representation has been made on behalf of I party and also, I party is called, absent.

3. On perusal of records already notices have been sent and, the said notices have been served to both the parties and the RPAD acknowledgment cards have been received by this Tribunal. Hence, it is found that inspite of giving sufficient and adequate chances by issuing notices of hearing to I party, the I party has not made any appearance. In such circumstances, the matter is posted for passing Award, after the perusal of entire records brought on record.

4. Further, from the above mentioned circumstances, it would be very much clear, in the present matter, that the I party has no interest to contest the present matter, inspite of the service of notices of hearing to the I party. It is for the I party to make out a case that I party is entitled to the above mentioned benefits and that the management has done a mistake by denying the said benefits. Further, on behalf of the II party, V.S. Naik, Advocate of the II Party, reported that the II party has not violated any provisions of the Rules and also, already granted all the legitimate benefits to the I party and also, as per the provisions of law, the relevant benefits have been granted by the II Party. Under the above mentioned special circumstances and peculiar facts, this Tribunal is constrained to pass appropriate award, after the perusal of materials available on record.

5. Since no appearance has been made and also claim statement has not been filed and further no case has been made out by I party and the present reference has only to be rejected for non- prosecution. Therefore, keeping in view the conduct of I party in, not appearing before this Tribunal, even though notices have been sent to the I party by way of RPAD and the conduct of I Party in not filing claim statement, in support of the said reference, it is crystal clear that the I party is no more interested in prosecuting the claim against II party. In the result and also in above mentioned facts and situations, it is to be held the present reference has to be rejected, for non prosecution and no useful purpose will be served in keeping the proceedings any more pending. Hence the following award.

**AWARD**

Reference is dismissed for non-prosecution.

(Dictated, transcribed, corrected and signed by me on 14<sup>th</sup> October, 2016)

V. S. RAVI, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2016

**का.आ. 2300.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स डेल्टा इंजीनियरिंग इंडस्ट्रीज के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बंगलूर के पंचाट (संदर्भ संख्या 32/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-29011/38/2013-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 21st November, 2016

**S.O. 2300.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2013) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Delta Engineering Industries and their workman, which was received by the Central Government on 16.11.2016.

[No. L-29011/38/2013-IR (M)]

RAJESH KUMAR, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
BANGALORE**

DATED : 14<sup>th</sup> October, 2016

**PRESENT :** Shri V S RAVI, Presiding Officer

**C R No. 32/2013**

**I Party**

The General Secretary,  
KIOCL Contract Workers Union  
(INTUC), 4-1-219/43, Regal Towers,  
Panambur, Mangalore – 575010

**II Party**

The Proprietor,  
M/s. Delta Engineering Industries,  
Site Office, KIOCL Pellet Plant Site,  
Panambur, Mangalore – 575010

**AWARD**

1. The Central Government vide Order No.L-29011/38/2013-IR(M) dated 27.06.2013 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

**SCHEDULE**

“Whether the action of the management of M/s. Delta Engineering, Contractors of KIOCL Ltd., in refusing to provide the benefits listed in the charter of demands (attached as Annexure-A) raised by the Union is legal and justified? If not, to what relief the workmen are entitled?”

2. After the receipt of the reference, the matter has been registered on the file of this Tribunal and notices have been sent for both parties.

3. On perusal of records already notices have been sent and, the said notices have been served to both the parties and the RPAD acknowledgment cards have been received by this Tribunal. Further, the Office of the Assistant Labour Commission (Central), Near Railway Station, Mangalore – 1, by letter in Ref. No. 5/05/2012-AM, dated 15.07.13, has informed to this tribunal that during the Joint discussions/Conciliation proceedings, the union representative have

informed that Delta Engineering Industries have made payment of bonus and leave wages to their Members and hence, they withdraw the dispute and also requested to kindly treat the said report as cancelled

5. In the result and also in above mentioned facts and situations, it is to be held the present reference has to be rejected, as withdrawn and no useful purpose will be served in keeping the proceedings any more pending. Hence the following award.

### AWARD

Reference is dismissed as withdrawn.

(Dictated, transcribed, corrected and signed by me on 14<sup>th</sup> October, 2016)

V. S. RAVI, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2016

**का.आ. 2301.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स श्री मोहम्मद शरीफ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 33/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-29011/39/2013-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 21st November, 2016

**S.O. 2301.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2013) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Sri Mohammed Sherief and their workman, which was received by the Central Government on 16.11.2016.

[No. L-29011/39/2013-IR (M)]

RAJESH KUMAR, Under Secy.

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 14<sup>th</sup> October, 2016

**PRESENT :** Shri V S RAVI, Presiding Officer

**C R No. 33/2013**

#### I Party

The General Secretary,  
KIOCL Contract Workers Union  
INTCU Office, Q.C.Lab Building,  
Panambur, Mangalore – 575010

#### II Party

Sri. Mohammed Sherief, (Contractor)  
No. 8, Site No. 115,  
Chokkabettu, Surathkal (Post),  
Mangalore - 575014

### AWARD

1. The Central Government vide Order No.L-29011/39/2013-IR(M) dated 27.06.2013 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

### SCHEDULE

“Whether the action of the management of M/s. Sri Mohammed Sherief, Contractors of KIOCL Ltd., in refusing to provide the benefits listed in the charter of demands (attached as Annexure-A) raised by the Union is legal and justified? If not, to what relief the workmen are entitled?”

2. After the receipt of the reference, the matter has been registered on the file of this Tribunal and notices have been sent for both parties. None appeared for the Ist party and Ist party also called absent. Infact, notice of hearings have

been sent to the I party by RPAD through the Department of Posts, India. Still, no representation has been made on behalf of I party and also, I party is called, absent.

3. On perusal of records already notices have been sent and, the said notices have been served to both the parties and the RPAD acknowledgment cards have been received by this Tribunal. Hence, it is found that inspite of giving sufficient and adequate chances by issuing notices of hearing to I party, the I party has not made any appearance. In such circumstances, the matter is posted for passing Award, after the perusal of entire records brought on record.

4. Further, from the above mentioned circumstances, it would be very much clear, in the present matter, that the I party has no interest to contest the present matter, inspite of the service of notices of hearing to the I party. It is for the I party to make out a case that I party is entitled to the above mentioned benefits and that the management has done a mistake by denying the said benefits. Further, on behalf of the II party, V.S. Naik, Advocate of the II Party, reported that the II party has not violated any provisions of the Rules and also, already granted all the legitimate benefits to the I party and also, as per the provisions of law, the relevant benefits have been granted by the II Party. Under the above mentioned special circumstances and peculiar facts, this Tribunal is constrained to pass appropriate award, after the perusal of materials available on record.

5. Since no appearance has been made and also claim statement has not been filed and further no case has been made out by I party and the present reference has only to be rejected for non-prosecution. Therefore, keeping in view the conduct of I party in, not appearing before this Tribunal, even though notices have been sent to the I party by way of RPAD and the conduct of I Party in not filing claim statement, in support of the said reference, it is crystal clear that the I party is no more interested in prosecuting the claim against II party. In the result and also in above mentioned facts and situations, it is to be held the present reference has to be rejected, for non prosecution and no useful purpose will be served in keeping the proceedings any more pending. Hence the following award.

#### AWARD

Reference is dismissed for non-prosecution.

(Dictated, transcribed, corrected and signed by me on 14<sup>th</sup> October, 2016)

V. S. RAVI, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2016

**का.आ. 2302.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स श्री जगदीश राव के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बंगलूर के पंचाट (संदर्भ संख्या 34/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-29011/40/2013-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 21st November, 2016

**S.O. 2302.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2013) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Sri Jagdish Rao and their workman, which was received by the Central Government on 16.11.2016.

[No. L-29011/40/2013-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
BANGALORE**

DATED : 14<sup>th</sup> October, 2016

**PRESENT :** Shri V S RAVI, Presiding Officer

**C R No. 34/2013**

**I Party**

The General Secretary,  
KIOCL Contract Workers Union  
INTUC Office, Q.C.Lab Building,  
Panambur, Mangalore – 575010

**II Party**

Sri. Jagadish Rao, Contractor  
D No. 1-721/4/1(1),  
Kodikere, Kulai Post,  
Mangalore - 575019

**AWARD**

1. The Central Government vide Order No.L-29011/40/2013-IR(M) dated 27.06.2013 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

**SCHEDULE**

“Whether the action of the management of M/s. Sri. Jagadish Rao, Contractors of KIOCL Ltd., in refusing to provide the benefits listed in the charter of demands (attached as Annexure-A) raised by the Union is legal and justified? If not, to what relief the workmen are entitled?”

2. After the receipt of the reference, the matter has been registered on the file of this Tribunal and notices have been sent for both parties. None appeared for the Ist party and Ist party also called absent. Infact, notice of hearings have been sent to the I party by RPAD through the Department of Posts, India. Still, no representation has been made on behalf of I party and also, I party is called, absent.

3. On perusal of records already notices have been sent and, the said notices have been served to both the parties and the RPAD acknowledgment cards have been received by this Tribunal. Hence, it is found that inspite of giving sufficient and adequate chances by issuing notices of hearing to I party, the I party has not made any appearance. In such circumstances, the matter is posted for passing Award, after the perusal of entire records brought on record.

4. Further, from the above mentioned circumstances, it would be very much clear, in the present matter, that the I party has no interest to contest the present matter, inspite of the service of notices of hearing to the I party. It is for the I party to make out a case that I party is entitled to the above mentioned benefits and that the management has done a mistake by denying the said benefits. Further, on behalf of the II party, V.S. Naik, Advocate of the II Party, reported that the II party has not violated any provisions of the Rules and also, already granted all the legitimate benefits to the I party and also, as per the provisions of law, the relevant benefits have been granted by the II Party. Under the above mentioned special circumstances and peculiar facts, this Tribunal is constrained to pass appropriate award, after the perusal of materials available on record.

5. Since no appearance has been made and also claim statement has not been filed and further no case has been made out by I party and the present reference has only to be rejected for non- prosecution. Therefore, keeping in view the conduct of I party in, not appearing before this Tribunal, even though notices have been sent to the I party by way of RPAD and the conduct of I Party in not filing claim statement, in support of the said reference, it is crystal clear that the I party is no more interested in prosecuting the claim against II party. In the result and also in above mentioned facts and situations, it is to be held the present reference has to be rejected, for non prosecution and no useful purpose will be served in keeping the proceedings any more pending. Hence the following award.

**AWARD**

Reference is dismissed for non-prosecution.

(Dictated, transcribed, corrected and signed by me on 14<sup>th</sup> October, 2016)

V. S. RAVI, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2016

**का.आ. 2303.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स फिल्ड मार्शल सर्विसेज के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय

सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 35/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.11.2016 को प्राप्त हुआ था।

[सं. एल-29011/41/2013-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 21st November, 2016

**S.O. 2303.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2013) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Field Marshals Services and their workman, which was received by the Central Government on 16.11.2016.

[No. L-29011/41/2013-IR (M)]

RAJESH KUMAR, Under Secy.

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 14<sup>th</sup> October, 2016

**PRESENT :** Shri V. S. RAVI, Presiding Officer

**C R No. 35/2013**

#### I Party

The General Secretary,  
KIOCL Contract Workers Union  
INTUC Office, Q.C. Lab Building,  
Panambur, Mangalore – 575010

#### II Party

The Proprietor,  
Field Marshals Services,  
No. 5-109/2, Chitranjal,  
Near Chitrapura Temple, Kulai Post,  
Mangalore - 575019

### AWARD

1. The Central Government vide Order No.L-29011/41/2013-IR(M) dated 27.06.2013 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

### SCHEDULE

“Whether the action of the management of M/s. Field Marshal Services, Contractors of KIOCL Ltd., in refusing to provide the benefits listed in the charter of demands (attached as Annexure-A) raised by the Union is legal and justified? If not, to what relief the workmen are entitled?”

2. After the receipt of the reference, the matter has been registered on the file of this Tribunal and notices have been sent for both parties. None appeared for the Ist party and Ist party also called absent. Infact, notice of hearings have been sent to the I party by RPAD through the Department of Posts, India. Still, no representation has been made on behalf of I party and also, I party is called, absent.

3. On perusal of records already notices have been sent and, the said notices have been served to both the parties and the RPAD acknowledgment cards have been received by this Tribunal. Hence, it is found that in spite of giving sufficient and adequate chances by issuing notices of hearing to I party, the I party has not made any appearance. In such circumstances, the matter is posted for passing Award, after the perusal of entire records brought on record.

4. Further, from the above mentioned circumstances, it would be very much clear, in the present matter, that the I party has no interest to contest the present matter, in spite of the service of notices of hearing to the I party. It is for the I party to make out a case that I party is entitled to the above mentioned benefits and that the management has done a mistake by denying the said benefits. Further, on behalf of the II party, V.S. Naik, Advocate of the II Party, reported that the II party has not violated any provisions of the Rules and also, already granted all the legitimate benefits to the I

party and also, as per the provisions of law, the relevant benefits have been granted by the II Party. Under the above mentioned special circumstances and peculiar facts, this Tribunal is constrained to pass appropriate award, after the perusal of materials available on record.

5. Since no appearance has been made and also claim statement has not been filed and further no case has been made out by I party and the present reference has only to be rejected for non-prosecution. Therefore, keeping in view the conduct of I party in, not appearing before this Tribunal, even though notices have been sent to the I party by way of RPAD and the conduct of I Party in not filing claim statement, in support of the said reference, it is crystal clear that the I party is no more interested in prosecuting the claim against II party. In the result and also in above mentioned facts and situations, it is to be held the present reference has to be rejected, for non-prosecution and no useful purpose will be served in keeping the proceedings any more pending. Hence the following award.

**AWARD**

Reference is dismissed for non-prosecution.

(Dictated, transcribed, corrected and signed by me on 14<sup>th</sup> October, 2016)

V. S. RAVI, Presiding Officer